EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

91-P17

Supreme Court, U.S.
FILED
JUL 2 1991
OFFICE OF THE CLERK

CASE NO. ----------

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

RAYMOND J. BLY

Petitioner

v.

STATE OF MARYLAND

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE MARYLAND COURT OF APPEALS

ANNAPOLIS, MARYLAND

PETITION FOR WRIT OF CERTIORARI

RAYMOND J. BLY

8087 Washington Blvd.

Jessup, Md. 20794

(301) 799-3516

QUESTIONS PRESENTED

Whether withholding the identity and age of the alleged victim and having her going under an assumed identity as the daughter of the Blys violated the 5th and 14th Amendments and Due Process Clause?

(a) Due to the defendant's knowledge of Vietnamese customs and not knowing if the alleged victim might be his wife's natural-born daughter, he was compelled to "rest" rather than mount a defense which would shame the Vietnamese family and cause his wife very great distress.

(b) According to Vietnamese custom, the defendant's wife would have had to remove herself from all of her family by being disgraced before them had her husband mounted a defense against her daughter that would show the daughter to be a liar.

(c) By the prosecution's

withholding of key evidence from Defense concerning the alleged victim's statements to the police, they effectively denied him his Constitutional Rights to face his accuser, i.e. Was she a relative or not?

(d) The accuser's identity was Key to the outcome of the trial and was denied by the prosecution's refusal to allow investigation into this area prior to trial as well as during trial.

(e) From evidence after conviction revealed to the defense, the accuser's age (as a minor) must be considered of paramount importance in a child-abuse case.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	1
PARTIES TO THE PROCEEDINGS	5
PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES	6
JURISDICTION	7
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	8
STATEMENT OF THE CASE	8
REASONS FOR GRANTING THE WRIT	19
CONCLUSIONS	20
APPENDICES	24
Each one of these appendices is an exact copy and retyped for the purposes of reproduction.	
APPENDIX A. The unreported opinion of the Court of Appeals of Maryland	24
APPENDIX B. The unreported opinion of the Court of Special Appeals OF Maryland	26
APPENDIX C. The Circuit Court ruling	

from Howard County, Maryland 37

APPENDIX D. Cert to Court of Appeals 41

APPENDIX E. Appeal to Court of Special Appeals of Maryland 57

APPENDIX F. My attorney's Motion for Reconsideration. 171

APPENDIX G. My Motion for New Trial N/A

APPENDIX H. Results of DNA finger-printing test 174

PARTIES TO THE PROCEEDINGS

1. Petitioner is Raymond Bly who was a Defendant in front of the Circuit Court of Howard County, Maryland who appealed his case to both the Court of Special Appeals and the Court of Appeals of the State of Maryland.

2. State of Maryland is the respondent and representing the State of Maryland are both States Attorney's Hymes, States Attorney for Howard County, Maryland and the Attorney General's Office for the State of Maryland.

No. ----------

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1992

RAYMOND J. BLY,

Petitioners

vs.

STATE OF MARYLAND,

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

Petitioner, Raymond J. Bly, humbly prays that a Writ of Certiorari be issued to review and set aside the judgments of the Courts of Maryland as

being against Mr. Raymond J. Bly's Constitution Due Process Rights.

JURISDICTION

First, the Circuit Court for Howard County, Md. to help themselves as well as other State officials railroaded Mr. Bly into an arrest, indictment and conviction record by withholding key evidence that violated, clearly, Mr. Bly's rights of a fair trial. Then Mr. Bly, on many occasions, filed Motions for New Trials - which were all denied - to be heard such as perjury by all State's witnesses, withholding of key evidence and altering victim's statements that were turned over - which is not in front of this court at this time but will be soon. Then Mr. Bly forced the alleged victim to get DNA fingerprinting tests which clearly showed she was no relative but the Circuit Court refused to grant a new

trial saying it made no difference who the alleged victim is or was or whether she committed perjury as to her identity and age made no difference. Then the Court of Special Appeals - where the judge had been promoted to - affirmed the lower court's conviction. Then, the Court of Appeals of Maryland refused to hear a Writ of Certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments 5, 14 of the United States Constitution as well as Due Process Clauses and the right to confront the accuser.

STATEMENTS OF THE CASE

In 1969, Raymond Bly, the Petitioner, was sent to Vietnam where he met his soon-to-be wife who was pregnant due to a rape. January 26th, 197Ø, she gave birth to a baby girl whom she named Ngoc Hong Doan. The Blys proceeded in acquiring the

necessary paperwork for the 3 of them to marry and come to the U.S. When all was said and done and my wife and daughter could come, my wife's father refused to let his granddaughter emigrate to the U.S. immediately because of negative propaganda against the U.S. to stop the marriages. Mr and Mrs Bly came to the U.S. crying that we had to leave our daughter behind but knew that in 2 years that my wife's father had promised that she could come and we would have her then. Well, Vietnam fell. For the next many years we wrote letters and sent money for her support all the while trying to redo the paperwork with the new Communist Government to bring her here. During this time my wife's family refused us pictures of our daughter and our daughter did not write letters until 1984 whereupon we received 6 letters from what was supposedly our daughter.

Looking back and having these letters analyzed, there were 6 different handwritings - none of which matched that woman who came here parading as our daughter. Then, the happy day came on February 8th, 1985. My brother-in-law, his wife and 2 children and what we thought was our daughter arrived in the U.S. Our daughter hated us and refused to speak to us or even be near us. My brother-in-law explained that it was due to the Vietnamese Communist indoctrination against Americans. For the ensuing 10 months, we discovered my wife's brother was an alcoholic who went on rampages against his children. His wife went behind our backs trying to get welfare and spread lies concerning our family. The girl that was parading as my wife's natural-born daughter physically attacked my American-born children as well as mentally attacking all of us on

a daily basis. It caused so much stress in the home that Mrs. Bly ended up being rushed from work to Emergency Surgery from a perforated ulcer that had burst. I ordered all the in-laws out of our home to save our sanity, my children's wellbeing and my wife's very life. They called the police while my wife was still in the hospital and said that I had raped this girl and beaten them. The police did nothing. My wife came home and they started screaming and yelling at her to throw me out that I have raped the girl. My sister-in-law again called the police to have me jailed so she could own and control our home. The police did nothing. At that time my brother-in-law and sister-in-law had a combined income of $25-30,000 a year and I had offered to pay for our daughter's room and board and help them move. They wouldn't hear of it. They

wanted welfare, i.e., housing, food stamps, medical assistance, college free. The girl ran to the police and told them I had threatened her life and wanted to kill her. Just before she left our house, she laughed and said "I'm not your daughter". If you will look into a 1983 Action filed at the United States Federal District Court, Baltimore, Md., you will discover all of the human rights that were violated prior to my arrest by the officials involved under Civil Action No. MJG 88-3711. These officials started running rampant over me and my family. When I turned my relatives in for quitting their jobs the same day they went to welfare and lying about their financial status in order to obtain welfare, the officials stopped them from being prosecuted and increased the welfare as they escalated the charges against me. I called immigration to

check out what this woman had said to us as to whether she might possibly be an illegal alien and not my wife's daughter. These same officials halted the INS investigation saying I was just trying to get out of the charges. Then I was arrested - where they broke into my home after getting me into custody - injuring one of my children, terrorizing the other 2 and almost causing my wife to die due to the strain it put her under and the possible eruption of the ulcer once again. They didn't care and they did know that they were playing a dangerous game with my wife's life at stake. They never once investigated where or when? It was only I was guilty, period. Then they convinced my attorney - who was a personal friend of theirs and a former States Attorney of the County to have me thrown in jail as a baby-killing, drug-crazed Vietnam Veteran who, in

fact, never once had to fire his gun in Vietnam and had never taken drugs in his life. Then trial came about. This alleged victim got on the stand using my entire daughter's identity and age and kept changing her story under cross until all she was left with was that I supposedly had done bad things to her whenever and wherever. This girl had been refused counseling by the State even though a court had ordered it at my request to help her overcome the communist indoctrination and refused blood tests on her to determine her identity. The State, during trial, threw in "other acts" without any dates, times or specific instances just like the charged crime. They falsified and withhold 98% of the victim's statements to the police because they knew she was an illegal alien and the statements concerning this so-called crime were so confusing and

contradictory to themselves. My attorney stated during trial "Did I really want my daughter hurt and possibly jailed?" With her changing her story and finally stating that it didn't happen the entire Summer which I was arrested for July 15th of doing it, there was no way I could be convicted - or so my lawyer said. He kept after me to "rest" for several hours while the court was in recess about how much I already owed him and how severely it would impact my wife for me to call my witnesses who had overheard the in-laws and the so-called victims at their drunken parties laughing at how stupid Americans are and how all the accusations had been lies and how easy it was to lie and get welfare. Not wishing to inflict any harm on my wife, I rested with no defense whatsoever. I filed a lawsuit against this woman and the in-laws for fraud and

misrepresentation. The Circuit Court in Howard County, Maryland had been running me around in circles for 4 years delaying the trial. Subsequent to the trial and my conviction, I no longer could afford to retain counsel and proceeded pro se in trying to appeal. Nothing worked. Later on I got the police statements in entirety which showed the police officers and the alleged had committed perjury in court. The judges all refused to hear it or submit any pertinant documentation. I then agreed to dismiss the civil suit against this woman if she would submit to DNA finger-printing tests - which she did and I did. I filed immediately for a new trial motion based on a due process violation stating it had violated my due process and my rights of confrontation and cross-examination by her proceedings under the alias of my wife's

natural-born daughter and thus inhibiting any possibility of mounting a defense. The judge, during this Hearing, refused my Motion for a New Trial. I hired an attorney who filed a Motion for Reconsideration and during that Hearing, the judge blatantly stated that you don't need a body in a murder case so why do you need a victims' identity in a child-abuse case? The previous judge that had heard the trial had henceforth moved up to the Appellate Court level where I feel he interfered and had my appeal squashed. I appealed to the next higher court with similar results because both courts are in the same building and he is a well-liked and well-honored judge in Howard County as well as the State of Maryland. I am now in front of you with only the identity at issue. I have, since, submitted a new New Trial Motion in the

Circuit Court based on a transcript of a deposition taken in front of the Honorable Judge Garvis at Federal District Court in Baltimore, Md in which this victim took the 5th Amendment concerning every question that pertained to her age or true name and her attorney, while speaking to the judge had a slip of the tongue and called this woman by a totally different name saying he knew her by this different name for some 2 years. Immigration still refuses to prosecute as well as the welfare organization refuses to prosecute saying that these poor Vietnamese have already been so abused that they refuse to add to it. This case demands justice and for my right to have my day in Circuit Court with a new trial where I can finally put on a defense that quite possibly will put all of my Vietnamese relatives as well as this illegal alien - whoever

she is - but she's not a relative behind bars and face possible deportation back to Vietnam.

REASONS FOR GRANTING THE WRIT

It is unconscienable for this honorable court to allow this to continue on any further. The truth will come out one way or another - if not in this country with the U.N. Commission on Human Rights. I am innocent and I have always been innocent. The only abuse that occurred in my home was done by my in-laws and this woman against my family and me and it is in the name of justice to overturn my conviction and grant me a new trial to right these wrongs. If I am so guilty and these officials, in-laws and the illegal alien are so very innocent, why is their only defense to all of the crimes they have committed against me and my family and the State and Federal Government is

that they were abused or I am a convicted child-abuser which makes them immune from my civil action.

CONCLUSION

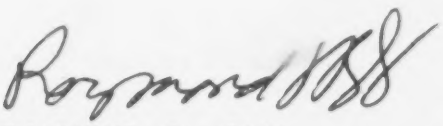
This is new ground that has no case law that has been able to be found in any State or Federal Court. The Constitution guarantees your right to confront your accuser. Is this right the right also of knowing your accuser's identity? I believe it is when it is of upmost importance of whether or not a defense should be mounted. The evidence against me was so contradicted by the victim that my attorney was sure I would not be convicted. The key reason for not putting on a defense was the fact that I believed my attorney when he told me that we had already won. I believed that my step-daughter was severely suffering from Vietnamese indoctrination and that one day the

officials would finally submit to court orders, state laws and my continuing requests to get this woman counseling. But this still has not happened to date. Why hasn't it? If I sexually and physically and emotionally abused this woman on a daily basis, why am I still the only one demanding counseling and all the officials and courts refuse to get it for her? For God's sake, PLEASE stop this nightmare of my children telling me that they don't need shoes or clothes and to fight on no matter what the cost. My wife tells me, if we have to sell our home, as we have sold many items in it, to continue on fighting for justice. I plead with you to overturn my conviction and, if you are interested in seeing my documented proof that all State witnesses against me perjured themselves, and how the States Attorney withheld key evidence during trial, I

will forward this to you in a brief. For a person to assume your step-daughter's identity that you helped to raise for the first 2 years of her life and fell in love with her as your own child to an illegal alien taking the stand and saying that she is this person has GOT to be a Due Process Violation, especially when the State and officials knew it before trial and withheld it and told her to commit perjury.

Respectfully

Submitted



RAYMOND J. BLY, pro se

Dated:

CERTIFICATE OF SERVICE

I hereby certify that I hand-delivered copies of the foregoing to the Attorney General's Office,

Baltimore, Md. Criminal Division and to the Supreme Court of the United States, Washington, D.C. this 23 day of July 1991.

Raymond J. Bly

RAYMOND J. BLY, pro se

RAYMOND J. BLY In the

Court of Appeals

of Maryland

v. Petition Docket No. 602

September Term, 1990

STATE OF MARYLAND 39 & (NO 594

SEPTEMBER TERM, 1990

COURT OF SPECIAL APPELAS)

ORDER

Upon consideratio of the petition for a writ or certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy

In the

Court of Appeals

of Maryland

September Term, 1990

Chief Judge

Date: April 26, 1991

Chief Judge

Dated: April 2o, 1991

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

NOS. 39 & 594

SEPTEMBER TERM, 1990

RAYMOND BLY

V

STATE OF MARYLAND

Wilner, C.J.

Bishop

Cathell,

JJ.

PER CURIAM

Filed: January 18, 1991

On May 1, 1987, appellant was convicted by a jury in the circuit Court for Howard County of child abuse, assault, and two sex offenses, for which he received a suspended prison

sentence. The victim of these offenses was alleged to be Ngoc Hong Doan, the daughter of appellant's wife Tieng.

Appellant claimed at trial that the person whom he allegedly assaulted and abused was not, in fact, Ngoc Hong Doan. He asserted that he had met and married Tieng in 1969, while he was serving in Viet Nam,that Tieng was pregnant when he married her, and that she gave birth to a child, whom she named Ngoc, on january 26, 197Ø. When his tour of duty was over, appellant and Tieng returned to the United States; Ngoc remained with her maternal grandfather. In 1985, appellant signed the papers allowing Ngoc to emigrate, and, in that year a 15-year old child purporting to be Ngoc came to live with appellant and Tieng. That is the child appellant was accused, and convicted, of assaulting and abusing.

As we indicated, appellant raised

the issue at trial of whether the child purporting to be Ngoc was indeed his stepdaughter. This was germane both to the credibility of the child as a witness and to her actual age. The question of her age was relevant to whether she was a "child" for purpose of the child abuse offense. Appellant had made certain efforts to obtain information on Ngoc, without success, prior to trial, and so, to some extent, he was hampered in his ability to learn all of the details about Ngoc. Nonetheless, the question of the child's identity was explored. Although on direct examination, the witness, purporting to be Ngoc, identified Tieng as her mother, she acknowledged on cross-examination that Tieng had taken care of her since her birth, that she recalled seeing her birth mother one time when she was about five or six years old, and that

she was later told that her birth mother had died. It is evident from her testimony that the witness (1) was not completely fluent in the English language, and (2) was being asked to recall painful experiences. At one point, a recess had to be called because she was crying. After appellant and Tieng left Viet Nam, she said that she stayed with an aunt, whom she also called "mom". She came to call a number of people "mom" or "mother" during her childhood because she said "I think every people who took care of me, I think they are my mom, because they give me the love like the real mother give the daughter love." Cross examination withrespect to the witness's parentage and upbringing was extensive.

Following his convictions, appellant filed a motion for new trial, upon which for separate hearings were

held. At the last of these hearings, appellant argued that Ngoc was not the natural child of Tieng, and evidence was taken with respect to that issue. In a supplemental memorandum, appellant told the Court that after the trial he had learned that Ngoc had acknowledged that her "mom" was still alive and that this information "tipped the scales of credibility and destroyed Defendant's previous belief and hope that Ngoc was the natural child of his wife." Eventually, the court denied the motion, noting that Ngoc's parentage has "been a mystery right from the beginning" and that "no one's absolutely certain of her parentage." From the judgments entered on the convictions, appellant appealed to this Court, complaining, among other things, that the trial court erred in denying his motion for new trial because there was "a substantial question as to the

identity of the prosecutrix [i.e., Ngoc] - and the probability that the prosecutrix testified falsely as to her own identity." He contended that the information he discovered after the trial constituted newly discovered evidence that justified a new trial. Recounting the trial court's comment about the uncertainty of Ngoc's parentage ab initio, we found no abuse of discretion in the denial of the motion and affirmed the judgements. See Bly v. State, Sept. Term, 1988, No. 568, Unreported Opinion filed January 19, 1989. A year later, in January, 1990, appellant filed a second motion for new trial, alleging additional newly discovered evidence, in form of blood tests, establishing that the person who purported to be Ngoc was not the daughter of Tieng. As in earlier appeal, he argued that this went not only to the witness's credibility but

also to the question of her age. The blood tests, he contended, were not known and could not have been known to him at trial. In a memorandum and Orderfiled February 2Ø, 199Ø, the court denied the motion. It said of these arguments:

"The Defendant's second argument is that the victim is not his wife's biological daughter therefore, the indictment must fail. During the Motion hearing the blood tests were admitted which disclose that the victim was not the biological child of the Defendant's wife. Nevertheless, the evidence indicated that the victim was under the care and custody of the Defendant from the time she arrived in the country. Md. Ann. Code Art. 27 Sec. 35A (a) (2) (i) (1957).

Thirdly, the Defendant alleges that the victim's age is unknown. The victim testified during trial that she was

born on January 26, 1970. There is no other evidence to contradict her age, therefore this argument must fail."

The day after this Memorandum and Order was filed, appellant noted and appeal to this Court. He also filed a motion in the circuit court to reconsider the denial of his motion for new trial. On May 23, 1990, the court denied that motion, whereupon a separate appeal was noted from that order. Thesole complaint made in these appeals, which have been consolidated, is that the court applied the wrong standard in deciding that this newly discovered evidence--the blood tests-- did not warrant a new trial and that, under the correct standard laid down in Yorke v. State, 315 Md. 578 (1989), a new trial should have been granted. We find no error and shall therfore affirm.

Appellant spends a great deal of his brief attempting to convince us that

the blood tests indeed qualify as newly discovered evidence. We shall assume that they do. The underpinning of appellant's claim of error was a brief remark made by the court from which appellant assumes, or at least alleges, that the court applied the wrong standard in judging the force of the evidence. That remark, we find, was taken out of context. Throughout much of the hearing on January 30, 1990, on the motion for new trial, the court questioned the relevance of appellant's assertions that Ngoc was Tieng's daughter, which was all that the blood tests established. Thecourt kept asking counsel what difference it made who the child was, what her name was, or who her parents were. There was no evidence to show that the person who appeared in court and testified against appellant was not the person he was accused of molesting. It was in that

context that the court said: "Well, I think the issue is really as to whether there was sufficient evidence to convict you of what you're alleged to have done. And, uh, I'll put it quite up--right up front. If in fact, uh, a person is, uh, harmed, whether he be a convicted, uh, felon or so forth, uh, if a criminal act was done against that person, um, in this country the person doing the act is still--has to be responsible under the law, regardless of the status of that particular victim, individual."

This statement, read in context, is fully consistent withthe view expressed by the court in its formal order -- that whether Ngoc was or was not the daughter of Tieng was essentially irrelevant, that the criticl fact was that, whoever she was, she was under appellant's care from the time she entered the United States. As we

indicated, the witness, purporting to be Ngoc, acknowledged at trial that she was not Tieng's natural child; she explained, with simple but elegant poignancy, her concept of "mom". It is evident to us, as we think it was to the trial court, that, using the standard enunciated in Yorke, supra, at 588, there is no "substantial or significant possibility that the verdict of the trier offact would have been affected" by knowledge of the blood tests.

ORDERS AFFIRMED:

APPELLAN TO PAY THE COSTS.

STATE OF MARYLAND * IN THE CIRCUIT

vs. * COURT FOR

RAYMOND J. BLY * HOWARD COUNTY

Defendant * CR 15Ø71

* * * * * * * * * *

MEMORADUM AND ORDER

This matter is before the Court on Defendant's Motion for a New Trial alleging newly discovered evidence on several grounds.

His first argument is based on the stimony of the Defendant's witness, Mr Victor Gant. Mr. Gant tetified at the hearing on the Motion, that in December 1985, the victim told Gant she had "just ade it (the allegations of sexual abuse) p." Gant also testified that the victim epeated this statement on the same evening n the presence of Gant and the Defendant. hrefore, this information is not newly iscovered evidence.

The defendant's second argument is that

the victim isnot his wife's biological daughter therefore, the indictment must fail. During the Motion hearing the blood tests were admitte which disclose that the victim was not the biological child of the Defendant's wife. Nevertheless, the evidence indicated that the victim was under the care and custody of the Defendant from the time she arrived in the country. Md Ann Code Art 27 Sec 35A (a)(2)(i) (1957).

Thirdly, the Defendant alleges that the victim's age is unknown. The victim testified during trial that she was born on January 26, 1970. There is no other evidence to contradict her, therefore this argument must fail.

The defendant further complains of his inability to review the records of the Department of Social Services. A stated in State v. Runge, 317 Md. 613 (1989), such records are confidential and are not discloseable.

Several other matters were raised by

the Defendant butnone of these are within the ambit of newly discovered evidence.

It is therefore, this 20th day of February 1990 by the Circuit Court for Howard County

ORDERED, that the Defendant's Motion for New Trial be and the same, is hereby DENIED.

J. THOMAS NISSEL, JUDGE

Copies to: Office of the State's Attorney

8360 Court Avenue

Ellicott City, Maryland 21043

Raymond J. Bly

8087 Washington Blvd.

Jessup, Maryland 20794

Copies mailed: Filed Feb 20, 1990

STATE OF MARYLAND * IN THE CIRCUIT

VS. * COURT FOR

RAYMOND J. BLY * HOWARD COUNTY

Defendant * CR-15Ø71

* * * * * * * * * *

ORDER

This Court, having considered the Defendant's Motion for Reconsideration and arguments advanced thereon, it is this 23rd day of May 199Ø

ORDERED the said Motion be and the same is hereby denied.

J. THOMAS NISSEL, JUDGE

Copies to: Office of the State's Attorney

8360 Court Avenue

Ellicott City, Maryland 21043

Richard I. Kovelant

308 Second Street

Laurel, Maryland 20707 TRUE COY TEST:

Copies mailed: 5/23/90

Filed: 1990 May 23 PM 2:34

RECEIVED May 25 1990

IN THE

COURT OFAPPEALS OF MARYLAND

SEPTEMBER TERM, 199

Petition Docket No.

RAYMOND J. BLY

V.

STATE OF MARYLAND

PETITION FOR WRITOF CERTIORARI

The defendant, Raymond J. Bly, had this case initiated against him by a person unknown to him or the court. The case stemmed from what was believed to be Mr. Bly's step-daughter who made allegations of abuse against Mr. Bly. Mr and Mrs Bly, the court and the jury all were under the assumption at thetime of trial, the arrest and the

indictment that this woman was confused as to who she was. Mr and Mrs. Bly were told that she had been lied toin Vietnam to protect her identity as being the daughter of an American and was given the identity of a daughter of a Vietcong. The judges throughout these cases for a new trial and appeals have all stated that her identity has always been in question. This is totally false. Mrs. Bly testified in the Circuit Court for Howard County on a new trial motion that, in fact, she gave birth to a daughter named Ngoc Hong Doan. When the DNA test results came back, another new trial motion had been filed and at the time of hearing, several immigration documents from both the U.S. Embassy, Saigon, Vietnam, and South Vietnamese Visa and Passport Sections were submitted into evidence to clearly show that Ngoc Hong Doan in 197Ø and 1971, when these papers were

processed was the natural-born daughter of Mrs. Bly. The only question was if this young woman knew who shewas or did not know who she was previous to the DNA testing. Both Mr and Mrs. Blyfeltshe was Mrs. Bly's daughter because they favored each other in appearance and the DNA tests were to convince her to start telling the truth and stop hurting her mother and step-father any further. But the tests came out that she's not even a relative which shocked Mr and Mrs Bly because we are now having to look for our real daughter. A writ should be issued setting aside the arrest and the indictment until such time asthe real identity of this woman can be used to charge Mr. Bly with the crime. The State, all along, was told by this woman that she was not Mrs Bly's daughter - which was new-found evidence. Since the appealto the Court

of Special Appeals on this issue, the State even knew her real name as being Ngoc Thi Nguyen and they probably knew her real age as well There is no question as to this girl's identity. She just fabricated answers in court and pretended she did not know who she was to protect herself from deportation proceedings.

QUESTIONS PRESENTED FOR RIEW

1. If the lower court's ruling was in error concerning the importance and relevancyof the identity of the alleged victim.

2. If the lower court's ruling refusing a new trial on the issue of identity was against Mr. Bly's due process rights of confrontation.

3. Was the lower court's ruling erroneous in refusing to set aside the indictment and arrest when the alleged victim was not, in fact, Ngoc Hong Doan.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, OR REGULATIONS

Constituional Amendments5 and 14 guarantee the right to a fair tial and other fundamental "due process" rights. It also guarantees you right to confront your accuser and knowher identity. This is fundamental under the Constitution as a right guaranteed to every citizen of this Country.

FACTS

In 1969, Mr. Bly met Mrs. Bly, who was pregnant as the result of a rape. In 1970, on January 26th, she gave birth to her daughter and named her Ngoc Hong Doan. In March of 1970, Mr. Bly started processing the needed paperwork to bring both his wife and step-daughter to America. For the next 18months, Mr. Blyhelped to raise his step-daughter while processing the paperwork Due to unforeseen circumstances, i.e., Mr. Bly's

father-in-law refusing to let his granddaughter emigrate to America because of propaganda negative as to how she would be treated in America. Thus, Mr. and Mrs. Bly departed in December 1971 for America and only with the assurance that within 2 years, if Mrs. Bly survived America, her daughter would be allowed to come here. Well Vietnam fell and the daughter could not come. Years went by and the Blys received no letters and no pictures just requests for moneytohelp raise this girl - which they sent. Then in 1982, they got letters telling them that their daughter refused to come to America. They told their brother-in-law that he couldn't come to America if he and his family didn't also bring the Bly's daughter with them because they wouldn't sponsor him otherwise. This brother-in-law had been thrown in and out of jail for

trying to escape Vietnam, could not work, had no money and HAD to leave Vietnam. He assured us that ifhe had to pick up our daughter and forcibly put her on the plane, he would. In 1985, they arrived with what was supposed to be my wife's natural-born daughter, Ngoc Hong Doan. In our home, she told us she hated us. She refused to talk to us, she avoided us and stayed only with the in-laws as the trial transcripts bear out. She was spiteful and master to both Mr. and Mrs. Bly as well as to their 3 American-born children. The brother-in-law told the Blys a story that their daughter, for security reasons, for her entire life had been told that her real mom was a Vietcong - a sister of Mrs. Blys. When we tried to convince Ngoc that Mrs. Bly was her real mother, she refused to accept it and said "You only adopted me after my

mom died". fter months of confusion in our home, we asked all of the in-laws to move out and take our daughter with them. The same day she went to the Police Department, refusing to live with the in-laws, she told the Blys she was not their daughter, Ngoc. During trial, we questioned the fact of who she really was. She had a good pretense of acting like she didn't know who she was and that she couldn't understand English very well.. This severely handicapped Mr. Bly's ability to defend himself.

ARGUMENT

Taking into consideration the Statement of Facts and considering the documentation from the years 1970-1971 from the U.S. Embassy, Saigon, Vietnam and the South Vietnmese Dept of Immigration as well as the account of Mrs. Bly's testimony concerning a Motion for New Trial on the evidence

that e had discovered of this woman telling a psychiatrist that her mother was in Vietnam and had a heart problem and now the DNA fingerprinting results which clearly showed this woman is not even a relative of the family and that the brother-in-law was forced to bring someone to the U.S. in order to get here himself.

This evidence, if broght to light at the time of trial, could have enlightened the jury that this woman had falsified documents, assumed another person's identity and had come to this Country illegally. How, then, would any juror have believed her testimony - even in part - in the face of documented proof showing the falsity of her emigration to the U.S. This would have been a key issue for the jury to decide on even if Mr Bly would not have put on a defense. Mr. Bly mounted no defense for three reasons:

(1) His attorney assured him that he had won the case and no jury would convict him without a date or a time of any of the acts supposedly occurring. (2) Mr. Bly's attorney stated further that since number (1)is true, why go to a great additional expense of putting on additional witnesses or, in fact, even mounting any defense at all. (3) (THIS IS THE MOST IMPORTANT ONE WHICH ALSO CONCERNS THIS ISSUE). Mr. Bly's attorney, in convincing him to rest, convinced him that by putting on a defense, he would destroy Mrs. Bly's daughter and probably destroy Mrs. Bly's relatives that had come to America. If you will note, Kim Jules' testimony for new trial, I had 20 some witnesses that would basically say the same thing she had said. I had documented proof of welfare fraudby Mrs. Bly's relatives. The financial part my lawyer brought up was the least

of my concerns. Ialready owed him a small fortune already. With assurances from him that I hd already won and that I didn't really want to destroy my wife's daughter and our in-laws or my wife was crucial to my decision to "rest". I would hever have rested if I had known at the trial of trial that this woman was no relative at all - let alone my step-daughter that I had helped to raise.

According to the Circuit Court of Howard County and the Court of Special Appeals, the jury had a question concerning this womn's identity in front of them. They did not!! The only thing they had in front of them was the thought that this girl didn't know who she was. Mr. Bly is, at the present time, back in the Circuit Court for Howard County with another new trial motion that was filed on January 10th, 1991. This new trial motion,

which I hope this court will consider, the fact that during the State's deposition of this young woman in front of a Federal Judge at the Federal Court House in Baltimore, Maryland, this woman got on the stand and still stated her name was Ngoc Hong Doan during the State's direct. When documents that have been submitted in my criminal case were brought to her attention during cross, she took the 5th Amendment to each and every question regarding both her age and identity. Her own lawyer, speaking to the court, called hr Ngoc Thi Nguyen and said he's known her by that name for 2 years. Further information from a deposition of my in-laws taken by Mr. Bly contained the brother-in-law's confession that this woman had no paperwork whatsoever on her He also stated that out of the 6 letters the Blys had received from Vietnam, none of them was from this

woman. The only handwriting he recognized was the 7th letter that was obtained from a wastebasket that this woman had written to send to Vietnam.

SUMMATION

Taking into account Vietnamese family loyalties and customs, the withholding of this key information from Defense during tril amount to the conviction of Mr. Bly. It was paramount for this knowledge to have been shared during trial for him to have had fair trial. On that basis, he requests a reconsideration of this important matter. Because this particular case breaks new territory since it involves Vietnamese family loyalties versus the right to face one's accusers, it, perhaps may set a new precedent in the court. Normal procedures states that Mr. Bly did, in fact, face his accuser in court. However, in this case that it untrue.

He faced what he thought was his wife's natural-born daughter that he helped to raise and that was the very main reason for his lack of self-defense. Therefore, none of the cases cited by the Circuit Court have any validity in this particular case. By facing a person Mr Bly believed to be his step-daughter, he was deprived of his Constitutionally-guaranteed rights of cross-examination of the accuser. He could not get into showing the jury the fraud and the deceit this woman had purpetrated upon the U.S. Government to obtain entrance into this Countrybecause he believed her to be hi step-daughter. Also, this woman might, in fact, be a murderer, a communist, a Vietcong, etc. but Mr. Bly could not explore these areas without the primary DNA test results before him which were refused him before t.ial.

CONCLUSION

For the foregoing reasons, the defendant, Raymond Bly, respectfully urges this honorable court to issue a Writ of Certiorari and grant Mr Bly his new trial. Otherwise, to the least extent possible, grant Mr. Bly at least the right to re-examine this witness in front of a trial judge as he was denied the right to do during trial.

RAYMOND J. BLY
8087 Washington Blvd.
Jessup, Md. 20794
(301) 799-3516

CERTIFICATE OF SERVICE

I hereby certify that I mailed a copy of the foregoing, postage prepaid, first class to the Attorney General, Baltimore, Maryland, Criminal Division on February 4th, 1991.

RAYMOND J. BLY

IN THE

COURT OF SPECIAL APPEALS

SEPTEMBER, TERM 1990

NO. 594

CONSOLIDATED WITH

APPEAL NO. 39

RAYMOND BLY

APELLANT

V.

STATE OF MARYLAND

APELLEE

APPEAL FROM THE CIRCUIT
COURT OF HOWARD COUNTY
(J. THOMAS NISSEL, JUDGE)

BRIEF FOR APELLANT

RICHARD I. KOVELANT
BARBARA H. KOVELANT
KRUGER, KOVELANT & HOLLMAN
30B SECOND STREET
LAUREL, MARYLAND 20707
(301) 953-7440

ATTORNEYS FOR APELLANT

TABLE OF CONTENTS

APPELLANT'S BRIEF

PAGE

TABLE OF AUTHORITIES..... iii

QUESTIONS PRESENTED..... v

STATEMENT OF THE CASE.... 1

STATEMENT OF THE FACTS... 2

ARGUMENT..... 5

I. THE TRIAL COURT ERRONEOUSLY APPLIED A SUFFICIENCY OF EVIDENCE TEST IN DENYING APPELLANT'S MOTION FOR NEW TRIAL AND MOTION FOR RECONSIDERATION OF THE SAME RATHER THAN THE PROPER STANDARD FOR A MOTION FORNEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE, AS REDEFINED IN YORKE V. STATE, 315 MD. 578

989)..5

A. THRESHOLD INQUIRY.7

(i) The Evidence Was Newly Discovered.....7

(ii) The Appellant was diligent in His Discovery..9

(iii)The Newly Discovered Evidence is More than Merely Cumulative or Impeaching in Nature.11

(iv)The Evidence Must be Material to the Issues Involved..11

(a) Identity Generally..11

(b) Child Abuse.....14

b. YORK STANDARD FOR GRANTING A NEW TRIAL BASED ON NEWLY DISCOVERED

EVIDENCE: That the newly discovered evidence may well have produced a different result, that is, there was a substantial or significant possibility that the verdict of the trier of fact would have been affected.....16

CONCLUSION.....20

APPENDIX PAGE

Court Docket.....R-1 through R-6

Transcript of Proceedings on Motion for New Trial.....T-1 through T-7

Memorandum and Order of Court of February 20, 1990.....R-7 through R-8

Motion or Reconsideration...R-9 through R-11

Order of May 23, 1990.....R-13 through R-14

Joint Motion for Consolidation..R-13 through R-14

Order, Courtof Special Appeals...R-15

Transcript of Trial on the Merits..T-8 through T-35

Transcript, Motion for Reconsideration...T-36 through T-43

TABLE OF AUTHORITIES

CASES

SUPREME COURT OF THE UNITED STATES

PAGE

Berger v. U. S.

62

295 u. S. 78 ( ).....12

UNITED STATES COURTS OF APPEAL

Johnson v. U. S.

32 F.2d 127 (8th Cir. 1929).6.20

MARYLAND

Benjamin v. State

9 Md. App. 373 (1970).....14

Bly v. State

Appeal Number 568, September Term 1988.....8,18

Davis v. State

202 Md. 463 (1953).....14

Dotson v. State

234 Md. 333 (1964).....11. 12. 13.

Green v. State

23 Md. App. 680 (1974).....14

Hutson v. State

202 Md. 333 (1953).....13,14

In re Petition for a Writ of Prohibition

312 Md. 280 (1988.....5

Jones v. State

16 Md. App. 472 (1973).....6.20

Love v. State

6 Md. App. 639 (1969).....14

Runge v. State

78 Md. App. 23 (1989).....9

State v. Devers

260 Md. 360 (1971).....5

State v. Runge

317 Md. 613 (1989).....9

Williams v. State

302 Md. 787 (1985).....12,13,19

Yorke v. State

315 Md. 578 (1989).....5.6.7.16,17,

19,20 21

CONSTITUTION OF THE

UNITED STATES

U. S. CONSTITUTION AMEND. V.....2

U. S. CONSTITUTION AMEND VI. 2,13

CONSTITUTION OF THE STATE

OR MARYLAND

Md. Const. Art. 21.....2,12,13

MARYLAND STATUTES

Md. Ann. Code Art. 27 35A.....1.15

Md. Ann. Code Art. 27 465c.....1

Maryland Rule 4-331.....5

QUESTIONS PRESENTED

I. WHETHER THE TRIAL COURT ERRONEOUSLY APPLIED A SUFFICIENCY OF EVIDENCE TEST THEREBY DENYING APPELLANT'S MOTION FOR NEW TRIAL AND MOTION FOR RECONSIDERATION OF THE SAME RATHER THAN APPLYING THE PROPER STANDARD FOR A MOTION FOR NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE AS REDEFINED IN YORKE V STATE, 315 MD. 578 (1989)

STATEMENT OF THE CASE

On May 1, 1987 after the conclusion of a jury trial, the Appellant was convicted of child abuse pursuant to Article 27, Section 35A of the Annotated Code of Maryland, Sexual offense - 4th degree pursuant to Artile 27, Section 465c of the Annotated Code of Maryland and Assault and Battery at common law (R-1 through R-6). On April 15, 1988 Appellant's first motion for New Trial was denied and the trial judge sentenced him to five (5) years imprisonment, suspended the sentence and placed him on three years supervisory probation which he is currently serving (R-1).

An appeal to the Court of Special Appeals was made on 21, 1988 and a mandate affirming the judgement was filed on January 19, 1989. Thereafter, a second motion for New Trial based on newly discovered evidence was filed and heard on January 30, 1990 (T-1 through T-7). Said motion was denied by Order filed February 20, 1990 (R-7 through R-8). A motion for Reconsideration was

filed on March 2, 1990 (R-9 through R-11) and denied on May 23, 1990 (r-12).

In Appellant's Motions for a New Trial and Reconsideration the Appellant essentially asserted that he had newly discovered evidence which established conclusively that the Camplainant purportedly Ngoc Hong Doan ("Ngoc") was not in fact Ngoc Hong Doan (R-9 through R-11). In short, the Appellant attempted to produce newly discovered evidence which, if accepted by the Court would have demonstrated that the individual named in the indictment was an imposter, not the same person who testified,nor the same peson whom the Appellant was convicted of abusing and assaulting. Accordingly, the Appellant asserted that the proof presented at trial did not correspond withthe indictment thereby resulting in a violation of his constitutional rights as guaranteed by Article 21 of the Maryland Declaration of Rights as well as the Fifthand Sixth

Amendments to the United States Constitution. In addition, Appellant argued that the status of the victim as a child under 18, a necessary element to sustain a child abuse conviction has not ben proven by the State as to said imposter. The pending appeal is a consolidated appeal from the Circuit Court denial of Appellant's Motion for a new Trial and reconsideration of the same (R-13 through R-15).

STATEMENT OF THE FACTS

During the Appellant's tour of duty in Viet Nam in 1969 the Appellant met and ultimately married his Vietnamese wife, Tieng. At the time of his marriage the Appellant's wife was pregnant and on January 4, 1970 gave birth to a daughter who was known as Ngoc (T-4).

Tieng's daughter was Apellant's stepdaughter and resided with the Apellant and his wife in Viet nam until the Appellant

completed his tour of duty and returnedto the United States (T-4). At the time the appellant and his wife left Viet Nam, Ngoc was approximately eighteen months old (T-4) and continued to reside withher maternal grandfather in Viet Nam (T-5).

Subsequent to Appellant's arrival in the United States the Appellant continued to correspond with his wife's family and provided regular financial assistance to Ngoc and the remainder of the Vietnamese family (T-5). These funds were also sent in the expectation that they would be used to secure the release of Ngoc from Viet Nam in order to reunite Appellant's family (T-5).

Prior to 1985 Appellant's brother-in-law (who also remained in Viet Nam) requested that Appellant sponsor his admission into the United States. To that end the Appellant agreed to do so provided his stepdaughter Ngoc would also emigrate to the United States and join the Appellant's family (T-5). Based on his brother-in-law's

assurance that Ngoc would be brought to the United States Appellant signd the necessary financial responsibility papers and documents (T-5).

Appellant's brother-in-law7s family and an individual purpoting to be Ngoc arrived in the United States on February, 1985 (T-3 through T-4). At this time Appellant's true stepdaghter would have been 15 years of age. Appellant had no factual basis to believe at the time of Ngoc's arrival or for that matter up until the conclusion of his trial that the individual who was identified as Ngoc was not who she was purported to be.

To the extent Appellant began to harbor doubts as to the identity of the alleged child, ngoc, he was unable to obtain any evidence to the contrary. Appellant was unableto secure any information from social services, the prosecutor, his brother-in-law or Ngoc as to her name, age and lineage. A review of the trial transcript indicates that the Complainant referred repeatedly to

her assumed identity before the jury by identifying herself as Ngoc and by referring to Appellant's wife (Tieng) as her mother (T-15 through T-20, T-22, T-23, T-24, T-30, T-31, T-32).

Subsequent to this Court's ruling on Appellant's appeal in Appeal Number 568 decided January 19, 1989the Appellant, in the course of a seperate civil suit, obtained blood test results which conclusively established that the individual posing as ngoc was not Ngoc, the daughter of his wife. This newly discovered evidence was not considered by this Court in the Appellant's first appeal and Appellant submits improperly considered by the trial court on his subsequent motion for a new trial and the reconsideration of the denial of the same which now form the basis of this appeal.

At a hearing before the Circuit Court for Howard County on January 30, 1990 the Appellant called the trial court's attention

the blood tests which were conducted and the fact that they established that the Complainant was not Ngoc. The Court, after reviewing the evidence, misapplied the standard of review for a motion for a new trial based on newly discovered evidence and related to Appellant during argument on his Motion for New Trial ... " I think the issue is really as to whether you, whether there was sufficient evidence to convict you of what you're alleged to have done." (T_6). As a result of this hearing and the application of this standard the Court denied Appellant's Motion for a New Trial.

Since Appellant's Motion for a New Trial was not predicated on sufficiency of the evidence but rather on the basis of newly discovered evidence the Court applied the wrong standard. At Appellant's hearing on his Motion for Reconsideration, the Court was appraised of the standard for a review of new trial motions basd on newly discovered evidence as set forth in Yorke v.

ate, 315 Md. 578 (1989) (T_40).

ARGUMENT

1. THE TRIAL COURT ERRONEOUSLY APPLIED A SUFFICIENCY OF EVIDENCE TEST IN DENYING PELLANT'S MOTION FOR NEW TRIAL AND MOTION R RECONSIDERATION OF THE SAME RATHER THAN E PROPER STANDARD FOR A MOTION FOR NEW IAL BASED ON NEWLY DISCOVERED EVIDENCE AS DEFINED IN YORKE V. STATE, 315 MD 578 989).

Pursuant to Maryland Rule 4-331 and se law construing the same, a court may ant a new trial on several mutually clusive grounds. (See, e.g., In re tition for a Writ of Prohibition, 312 Md. 0 (1988), Yorke v. State, supra.

First, a trial judge may grant a motion r new trial on the basis that a verdict is ainst the weight of the evidence. (In re tition for a Writ of Prohibition, supra,

wherein the Court overruled the State v. Devers, 260 Md. 360 (1971) "sufficiency of evidence standard", specifically distinguishing the motion for acquittal standard, stating that the court should take into account such factors as credibility on a motion for new trial.

Second, and applicable to Appellant's motion herein, a trial judge may also grant a motion for a new trial on the grounds of newly discovered evidence. (see, e.g., Yorke v. State, supra). The standard to be applied in grantin a motion based on newly discovered evidence is not the same standard as that for a new trial based on a weight of the evidence attack. The newly discovered evidence test is set forth in Yorke, supra as whether "the newly discovered evidence may well have produced a different result, that is, whether there was a substantial or significant possibility that the verdict of the trier of fact would have been affected." (Yorke at 588). The trial court erred in

enying Appellant's Motion for New Trial ased on newly discovered evidence and ubsequent Motion for Reconsideration of the ame in that the Court erroneously applied a ufficiency of evidence test (T-6) in lieu the dictates of the Court of Appelas as t forth in Yorke v. State, supra.

Prior to applying the Yorke standard pplicable to a motion for a new trial based n newly discovered evidence, the trial ourt is required to consider the following reshold points: (i) the evidence must be ewly discovere; (ii) the defendant must be iligent in his discovery of the evidence; ii) the evidence discovered must be more han just cumulative or of an impeaching ature; and (iv) the evidence must be terial to the issues involved. Jones v. tate, 16 Md. App. 472 (1973); Johnson v. U. , 32 F.2d 127 (8th Cir. 1929): Yorke v. tate, supra.Once these threshold questions points have been satisfied, the next gee of inquiry for the Court is the

persuasiveness of the new evidence, that is, could the new evidence affect the outcome of the trial. As stated previously, the standard for determination of said inquiry has recently been redefined by the Court of Appeals in Yorke v. State, supra as whether a different result, that is, whether as a result of the newly discovered evidence there is a substantial or significant possibility that the verdict of the trier of fact would have been affected. Counsel for Appellant apprised the trial court of the Yorke standard at the hearing on the Motion for Reconsideration held on May 22, 1990 (T 40). The Appellant aserts for the reasons cited herein that all threshold elements have been satisfied and that the newly discovered evidence meets the Yorke standard for granting of a new trial. Therefore, Appellant's Motion for a New Trial should have been granted initially or at the time of the Appellant's Motion for Reconsideration

A. THRESHOLD INQUIRY

(i) The Evidence was Newly Discovered.

Although the Appelant maintained throughout the trial that there was some questionas to the actual identity of the person claiming to be his stepdaughter who was born on january 26, 1970, there was no evidence which was obtainable or compellable at the time of trial to support his opposition.

During the early discovery phase of the litigation, the Appellant requested that he receive all investigative police reports, social service reports and evaluations concerning the Complainant named in the indictment. The state had taken the position that the same was not discoverable which position was sustained by the tril court (R-8). To the extent discovery was produced by the State, the police report furnished to the Appellant had blackout

deletions regarding in part, the questionable identity of the Complainant. Thus, the discovery of the true identity of the Complainant was withheld from the inception of the proceeding.

Subsequent to the trial, in December 1987 the Appellant received a social service report which indicated that the Complinant's mother and sister were still in Viet Nam (Compare T-25 wherein "Ngoc" testified that her mother was dead). Thisinformation was also in conflict with the assertion in Court that the Complainant was the individual who was the child of the Appellant's wife and hence his stepdaughter (T-15 through T-2Ø, T-22 through T-24 and T-3Ø through T-32).

The Appellant did not receive the complete police report,without the dleltions until he conducted discovery in the context of a subsequent civil proceeding which he initiated against his brother-in-law and the Complainant in a case entitled Bly, et al v. Minh Ngoc Thi Mai, et al, Case No.

88CA-7595 pending in the Circuit Court for Howard County. This discovery occurred in December 1989. At this time, Appellant compared the police report he had received from the State at his criminal trial to the police report he received during civil discovery and learned of the deletions and that appeared to indicate that the Complainant was posing as his stepdaughter. This evidence, newly discovered at this point, was simply unavailable to him prior to or during the criminal trial period.

Although this information helped to further confirm his personal doubts as to the identity of the Complainant, it was not until December 4-5, 1989 that Appellant was able to secure conclusive evidence regarding Complainant's identity. This evidene became available after this Court affirmed the trial court's denial of his Motion for a New Trial. See Bly v. State, slip opinion dated September Term, 1988. In the course of Appellant's aforementioned civil suit, the-

Complainant submitted to blood testing which conclusively established she was not the daughter of Appellant's wife and therefore was not the Appellant's stepdaughter as she had represented.

The sworn to erroneous testimony of her identity would certainly form the basis of a new trial since the State's case was largely, if not exclusively predicated on the testimony of this witness. In addition, for the reasons presented herein, the variance between the proof adduced and the indictment are material, and therefore the conviction should be set aside and a new trial ordered.

(ii) The Appellant was Diligent in His Discovery

As indicated above, the Appellant maintaind a suspicion as to the complainant's true identity, however he was unable to pursue any course of action that would have confirmed this ultimate fact.

From the onset the Appleeant requested

that he receive all pertinent socil service reports and evaluations concerning the complainant. The Department of Social Services and the Court would not accede to this request or provide him with records of any evaluationsor reports. Further, the Court at the time of trial in 1987 had no authority to order the Department of Social Services to disclose any records pertining to the alleged abused child to Appellant, since the trial preceded the window for discovery briefly opened in Runge v. State, 78 Md. App.23 (1989). (This window was once again closed when ruling of the Court of Special Appeals was reversed in State v. Runge, 317 Md. 613 (1989). Accordingly, Appellant was precluded from obtaining the evidence prior to or during trial which he subsequently obtained in his civil suit.

In addition, the criminal discovery request, as indicated previously, produced only an edited version of the police report which did not confirm the Appellant's belief

s to identity and age of the Caomplainant. t was not until after the trial was ncluded that the entire police report was de available.

Finally, the Appellant specifically quested blod testing in the early months 1986 prior to trial, but once agin the partment of Socil Services would not mply. It should be noted that there was legal basis to require the Complainant to bmit to blood tsting. But for her bsequent voluntary cooperation in the vil proceeding in December, 1989, the ppellant could not have forced the issue. ior to that time. no amount of diligence uld have been excercised to require this sting. Once the results were obtained, e trial court, by Appellant's Motion for w Trial, was advised of the findings which pported the Appellant's belief that the mplainant was in fact an imposter and nad der oath testified flsely (R-7).

The fact that the Appellant maintained

unsupported belief that the Complainant
s not the stepdaughter left behind in Viet
m in December, 1979 should not be the
tmus test for measuring his diligence in
tempting to learn the true identity of his
cuser. The facts have demonstrated that
undertook all reasonable efforts to
cure confirmation of his beliefs, but due
the inability to obtin a court order to
quire blood testing, inaction of the
partment of Social Services , and
complete discovery in the course of his
iminal trial, the Appellant was
successful through no fault of his own.
onicllly, only the Complainant herself held
e key to unlock his dilemma. This was not
complished nor could it have been prior to
voluntary compliance with blood testing
December, 1989.

(iii) The Newly Discovered Evidence is re Than Merely Cumultive or Impeaching in ture and, (iv) The Evidence Must be terial to the Issues Involved.

The newly discovered evidence presented by appellant in his Motion for New Trial was clearly not merely cumulative or impeaching in nature; rather, the evidence newly discovered was clearly material to the issues involved, casting doubt on the validity of the conviction itself for the following reasons:

(a) Identity Generally

The failure of the trial court to consider this newly discovered evidence permits a conviction to stand based on testimony of an unidentified Complinant, an imposter, since the newly discovered evidence concluively establishes that the individual testifying as Ngoc was indeed some other unknown individual. The identity or lack thereof of the Complainant gos to the sufficiency and validity of the indictment upon which the conviction was based. In Dotson v. State, 234 Md. 333 (1964) the Court established the criteria

for variance problems relating to the names in an indictment and the proof elicited at trial, stating that the issue is whether a defendant is misled or prejudiced in his defense by the variance in names. The variance is material if it misleads the defendant so that he cannot make an intelligent defense or if it exposes him to double jeopardy. (See also, Berger v. U. S., 295 U1 S. 78 (____). The Court in Williams v. State, 302 Md. 787 (1985) emphasized that the primary purpose of a charging document is to fulfill the constitutional requirement contained in Article 21 of the Maryland Declaration of Rights that each person charged with a crime must be informed of the accusation against him. The Court specifically stated that the particular purposes served by this constitutional requirement include inter alia, the aforementioned Dotson mandates, that is, to specifically enable the accused to adequately prepare for his trial and to

protect the defendant from double jeopardy. (Williams at 791).

The indictment sub judice specifically alleged that all crimes were perpetuated by this Appellant against his stepdaughter, Ngoc Hong Doan. The newly discovered evidence demonstrates that the individual who testified as Ngoc hong Doan wasin fact an imposter. Had this information been available at trial, the Appellant would have been able to question and investigate this individual as to her age, prior conduct, competency, past criminal activities, if any, or motives for statements made upon which the charges and ultimate conviction were based, as well as other matters which may have established that the events as alleged did not occur, or,in fact, that the complainant was an adult rather than a minor, a necessary element for a child abuse conviction. In effect, the Appellant was totally precluded from investigation of the complainant's background and other relevant

surrounding circumstances necessary for the adequate preparation of his defense in contavention of Article 21 of the Maryland Declaration of Rights as discussed in Dotson (supra) and Williams (supra).

Further, Appellant's fundamental right to confrontation as guaranteed by the Sixth Amendment has been denied since newly discovered evidence establishes that the Complainant holding herself out as Ngoc is indeed an imposter. Appellant has the fundamental right to confront the true identity of his Complainant in order to effectuate the aforementioned fundamental right to prepare an intelligent defense and adequately prepare for trial (Dotson, supra; Williams, supra).

In addition, since the Appellant was convicted as to Ngoc, the Appellant is theoreticaly subject to further prosecution by the imposter since theyare two separate and distinct individuals. This certainly gives rise to double jeopardy problems and

s thereby violative of the requirement to nform proof with an indictment (Dotson, pra).

In Hutson v State, 202 Md. 333 (1953), he Court recognized that a variance between popular name and a given name will not be tal to an indictment, but reaffirmed that e name of the person injured by the fense charged must be stated and the ilure to state it, or a material variance tween the statement and the proof adduced trial is fatal. herein, this is not a se where there is a difference between a pular and given name of a complainant. is is not a case where the Complainant's me was misspelled in the indictment and rrectly stated at trial, nor is it a case re the Complinant's alias was named in e indictment and her real name adduced at ial. The variance herein exists not as a e misnomer; but rather, by virtue of wly discovered evidence the variance goes the actual identity of the Complainant.

he indictment alleges that the acts were ommitted against a specific minor, namely goc Hong Doan. The newly discovered vidence demonstrates that Ngoc is a eparate and distinct individual from the erson who testified at trial. In Hutson he Court noted that a name variance could e fatal to a conviction. Certainly an dentity variance must be fatal.

For the foregoing reasons, the ppellant was unable to prepare an adequate fense due to the erroneous testimony of e Complainant as to her identity. If the urt denies the reopening of this matter it ly perpetuates an existing fraud and, if is decision is permitted to stand the ate would never have to put the named plainant on the stand or indeed be liged to name the correct accuser in any dictment.

(b) Child Abuse

In a criminal prosecution, proof of

ach element constituting the crime charged
s essential for conviction thereof (Davis
. State, 202 Md. 463 (1953) and all matters
ssential to the charge must be proved as
lleged in the indictment (Green v. State,
Md. App. 680 (1974), Benjamin v. State, 9
. App. 373 (1970), Love v. State, 6 md.
p. 639 (1969).

Accordingly, the State was under an
bligation to prove all elements f child
use to support the conviction of the same
der Count I. Pursuant to Article 27
ction 35A of the Maryland Code child abuse
s the:

"(i) The sustaining of physical injury
a child as a result of cruel or inhumane
eatment or as a result of a malicious act
any parent orother person who has
manent or temporary care or custody or
sponsibility for supervision of a child
ner cicumstances that indicte that the
ld's health or welfare is harmed or
reatened thereby; or

(ii) Sexual abuse of a chid whether hysical injuries aresustained or not. (3) CHILD MEANS ANY INDIVIDUAL UNDER THE AGE OF 8 YEARS. (EMPHASIS ADDED). (4) (i)"sexul buse" means any act that involves sexual olestation or exploitation of a child by a rent or other person who has permanent or mporary care or custody or responsibility r supervision of a child. (ii) "Sexual use" includes, but is not limited to : 1, ncest, rape,or sexual offensein any degree: Sodomy; and #. Unnatural or perverted xul practices."

In particular, Section 35A(3) eciiicly requires that a victim of child use be under the age of 18 years at the me of the abuse. Accordingly, the State the burden of proving said age, an sential element, beyond a reasonable doubt order to sustain a conviction for child se.

In his Motion for New Trial, Appellant ein argued that by virtue of the newly

scovered evidence, the alleged victim's ue age, an essential element to sustain is conviction for child abuse is simply nproven and unknown or best erroneous. In enying the Appellant's Motion and the tion for Reconsideration, the trial court ated that the victim's testimony during ial claiming a birthdate of January 26, 70 was uncontradicted (R-7, R-8). While is may be true as to Ngoc, since this was oc's birthdate, there is simply no proof at this birthdate is true as to the poster. Further, the newly discovered idence clearly establishes that the victim roneously testified under oath as to her e identity, that is not just her name but to all aspects and indecia of her ntity, including her birthdate. It is ar the victim merely recited the thdate of the person she impersonating. addition, the case at hand does not volve an alleged victim of tender years, even pre-puberty age wherein the

hildhood status is visually apparent early, the fact that the actual Ngoc may e a minor does not ipso factor confer inority status upon the imposter, i.e., a tatus which has not and must be proven by he state to sustain th hild abuse nviction herein. In other words, the tate had the burden of proving beyond a asonable doubt the age of the imposter, t the age of Ngoc since it was the poster who was the Complainant.

B. Yorke Standard for Granting a New ial based on Newly Discovered Evidence: at the newlydisocered evidence my well ve produced a different esult, that is, ere was a substantial orsignificant ssibility that the verdict of the trier of ct would have been affects.

In 1989 in Yorke v. State, supra, the urt of Appeals reconsidered the standard he applied in granting a new trial on the sis of newly disocered evidence, ecifically setting forth the standards as

"the newly discovered evidence may well ve produced a different result, that is, here wa a substantial or significant ossibility that the verdict of the trier of ct would have been affected." (Yorke at 3).

In redefining the standard to be plied the Court of Appeals specifically ated that a standard of "probability would oduce an acquittal" was too stringent a andard for a defendant to met. Therefore e Yorke standard of "may well have oduced a different result" and the ubstantial or significant posibility that e verdict would hve been affected" must be nstrued as a lesser burden for Appellant meet than that of "probable acquittal" in granting of Appellant's Motion for a New al. (Id. at 588).

In the instant case, the new evidence, presented, may well produce a different sult, that is, there is a substantial or gnificant possibility that the verdict of

e trier of fact would be affected, since e conviction was based upon the tetimony o e Complainant who clearly identified erself and testified as Ngoc, the alleged ictim named in the indictment. The newly scovered evidence proves that the mplainant testified erroneouslyunder oath d was in fact an imposter.

Clearly Appellant's wife did give birth a daughter named Ngoc on January 26, 70, Appellant sent money to Vietnam to pport that same child and in 1985 pellant specificially conditioned the onsorship of his brother-in-law's migration to the United States on bringing e specific child, that is, his wife's ughter Ngoc, not any other individual. In ier words, without Ngoc there would be no onsorship and no posibility of immigration Appellant's brother-in-law.

In Bly v. State of Maryland, Appeal mber 68, September Term 1988 at page 4, is Court stated that Ngoc's identity was

lways a mystery. In light of the newly iscovered evidence this sttement now misses he point. Although the mystery as to the dentity of Ngoc's parentage was raised at ial, albeit on a limited basis (Compage -15 through T-2Ø, T-22 through T-24, and -3Ø through T-32 with T-25, T-26, T-27 and -29), the jury was clearly offered the planation as to the source of the mystery, at is that Ngoc was told that her birth ther was killed during the Vietnam war in der to protect her from the Viet Cong -34 and T-35). In other words, the stery surrounding the parentage of Ngoc, e Complainant's assumed identity was plained aay as a protective measure in a r torn country.

By contract, however, and at issue in e instant appeal is the question as to the ue identity of the actual Complainant med in the indictment and who testified at ial, that is, the actual identity of the rson serving as the necessary vehicle to

nable Appellant's brother-in-law to
mmigrate to the United States. The mystery
egarding the true identity of the imposter
s a totally different mystery than that
eferred to by the trial court after the
rial on the merits; a mystery which affects
he constitutional rights of the Appellant
nd should form the basis for the granting
f a new trial based on newly discovered
vidence.

All statements made to the polie, the
epartment of Social Services and indeed the
ry are clearly suspect in light of the
wly discovered evidence. Under cross
amination at a new trial the jury would be
ree to evaluate the fact that the
mplainant assumed an identity which wasnot
rs. This issue would lend support to the
levance of Appellant's contention that the
arges were filed in retribution for his
nduct with respect to his brother-in-law
T-7 through T-11). Testimony regarding
d motive was never before the jury due to

preliminary ruling by the tril court that id evidence was irrelevant (T-9 through 11). The jury would now be able to weight e credibility of this witness in light of r true identity and her prior erroneous stimony.

Indeed, the entire thrust of a new ial as to the assault and battery and the urth degree sexual offense is based on the edibility of the Complainant. There can no doubt that the issue of credibility is major importance in these types of cases. rtainly, the jury could now accurately igh that credibility when the onlywitness the crime has testified under oath that e was Ngoc when in reality she is an poster. This goes beyond mere confusion, is absolutely critical as to her veracity d competence as a witness.

Moreover, the Appellant would not be le to adequately prepare for an tennligent defense (Dotson, supra: lliams, supra) since he would be able to

vestigate the individual posing as Ngoc o suddenly appeared in his life, as to her tual age, prior conduct, competency, past iminal activities, if any, or motives for atements made upon which the ultimate nviction was based.

Finally, the Yorke standard for new scovered evidence clearly mandates pellant's Motion for New Trial be granted to the conviction for child abuse. The ate simply has not met its burden of oving beyond a reasonable doubt the age of e imposter, an essential element in a ild abuse conviction. As stated eviously, the fact that the actual Ngoc y have been a minor at the time of the leged abuse does not ipso facto confer nority status upon the Complainant, a tally separate and distinct person.

conclusion

In granting a motion for a new trial sed on newly discovered evidence, the ial court is required to consider the

llowing threahold points: (i) the evidence st be newly discovered: (ii) the Defendant st be diligent in his discovery of the idence; (iii) the evidence discovered must more than just cumulative or of an praching nature; (iv) the evidence must be terial to the issues involved. After the reahold inquiry is met the Court is to ply the Yorke standard: whether the wlydiscovered evidence may well have oduced a different result, that is whether ere was a substantial or significant ssibility that the verdict of the trier of t would have been affected, a less ringent standard than the overruled obable acquittal test. (Yorke v. State, Md. 578 (1989); Jones v. State, 16 App. 472 (1973); Johnson v. U.S., 32F.2d (8th Cir. 1929). For the reason cited rein, the Appellant met all the criteria quired for the trial court to grant a new al. It is clear that the newly scovered evidence in the se at hand has

t the newly defined Yorke standard. cordingly, the court erred in not granting pellant's Motion for a New trial based on wly discovered evidence in that the trial urt erroneously applied a sufficiency of idence test in making its ruling in ntravention of the dicttes of the Court of peals in York v. State, supra.

Further, Maryland Rule 4-331 provides at the court may grant a new trial if quired in the interest in justice. if a w trial is not granted, justice will not served and the fraud perpetuated upon not ly this Appellant but the Court a well ll continue.

Respectfully submitted,

KRUGER, KOVELANT & LLMANN

By: RICARD I. VELANT

By: BARBARA H. VELANT

308 Second Street

Laurel, Maryland

0707

(301) 953-7440

Attorneyfor

ppellnt

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day
f September, 1990, a copyof the foregoing
rief for Appellant was mailed, first class
stage prepaid, to Richard B. Rosenblatt,
q., 200 Saint Paul Place, Saint Paul
aza, Baltimore, Maryland 2202.

RICHARD I. KOVELANT

N THE CIRCUIT COURT FOR HOWARD COUNTY,

ARYLAND

TATE OF MARYLAND

s. Criminal No 15Ø71

AYMOND J BLY

Defendant

REPORTER'S OFICIAL TRANCRIPT OF PROCEEDING

(Motion for New Trial & Post

onviction)

Tuesday, Jnuary 3Ø, 199Ø

Ellicott City, Md

EFORE;

HONORABLE J. THOMAS NISSEL

PEARANCES:

For the State:

LILLIAN P. CLARK, ATTORNEY

For the Defedant:

PRO SE

ESLIE J. CALE

t least a photocopy of it for our records?

THE COURT: Well, the clerk'll give you photocopy of it and send it to you. Any bjection to, uh, having the, uh, hotocopy--

MS. CLARK: As a matter of fact, Yur onor, it might be better if he xeroxes and eeps the xeroxes in the court file.

THE COURT: No, wel'll keep the riginals. Clerk'll mail it to you.

THE WITNESS: Thank you, Your Honor.

THE COURT: You wanna ofer this, Mr. ly?

MR. BLY: Yes.

THE COURT: All right. Defendant's xhibit.

(Defendant's Exhibit No. 7 was then arked and admitted into evidence.)

THE CLERK: No, that was just a --

THE COURT: Oh, this is just the, uh, that's just the application.

MR. BLY: Your honor, there has been a lot of discussion about the identity of this girl. From the very first day she was at the police station, January 2nd, she told the police and social services she was not my wife's daughter, she was adopted. But I was under the assumption at that time that she was led to believe that to save her from the enemy while living in Vietnam. I--

THE COURT: Well, as I understand -- Do I understand that, uh -- Let me get this straight. You, you married your wife in Vietnam, did you?

MR. BLY: I'd like to submit these two into evidence.

THE COURT: I'm just asking you.

MR. BLY: Yes.

THE COURT: Okay.

MR. BLY: I was in Vietnam before the girl was born too. And knew my wife. And I got passports.

THE COURT: Okay, fine. But, but you rought your wife over here, did you? And ow, how did the girl manage to come with ou?

MR. BLY: The girl didn't. My wife idn't. I had some problems with my ther-in-law.

THE COURT: Okay, so they, they came ver the country later?

MR. BLY: My wife came about six months ter. I went back as a civilian to get r.

THE COURT: Okay. And when, when did when did the child come?

MR. BLY: Nineteen eight-five.

THE COURT: All right, 1985.

MR. BLY: Fourteen years later.

THE COURT: She lived with you, did she?

MR. BLY: She lived with us the first months of her life in Vietnam. Then we rought her in 1985, she lived with us from ebruary 8th 1985 tell January 2nd 1986.

THE COURT: So you say she lived with

ou the first 18 months in Vietnam?

MR BLY: Yes.

THE COURT: But, uh -- now you say it's ot your wife's girl?

MR. BLY: The girl that came isnot my ife's daughter. That we had requested to ring.

THE COURT: well, the--

MS. CLARK: That's--

THE COURT: The--

MR. BLY: Let me go back a minute, Your nor.

THE COURT: Okay. All right. Okay. I t it.

MR. BLY: This is very --

THE COURT: But she, but she lived with u, is that correct? You and your wife.

MR. BLY: In 1969, I met my wife. She d a baby in 1970. In the summer of 70, I ved with her and through 81 -- 71, when e Army shipped me back here, I had to go ck as a civilian to get my wife and my ep-daughter, who I was presently trying to

dopt then.My father-in-law wouldn't let ither one come, so I got a job there and tarted getting shot at. My father-in-law llowed my wife to come, but said due tothe ropaganda about the U.S. he wouldn't let my aughter come for 2 years. Well, Vietnam ell. To the Communists. And we were ighting all the way up to 1985 to get our aughter here from Nov of 71 when we left r behind. Half of my wife's family died n 1975 during the takeover. We believe now hat my wife's daighter died. Since we were ending large sums of money to Vietnam for r support, the family didn't let her die. hen when I insisted they bring our aughter, which theyrefused to do, I told my rother-in-law I would not sign financial esponsibility for him to come unless my aughter was with him. He had to bring mebody. He brought an illegal alien that isrupted my household, moved out, made all ind of false accusations, which I thought ounseling would clear up. I kept turning

he social worker in for contempt of court, ecause the court ordered counseling for the irl and he - they kept refusing. Then when he trial came, I didn't know whether she as my daughter or not. I didn't wanna hurt er. I figured the truth would come out and would walk a free man. My lawyer kept aying how much money I owed, rest the case, u'd won. So I never put on a defense. hen a year after my trial and conviction I ome up with the psychological evaluation hat says - her mother and sisters and rothers are in Vietnam. We bring in a new rial motion. We submit it to Judge ischer. He says mywife can submit it ecause she's the mother of the child. But hen when we raise it, he says she isnt emother, we can't submit it. So it's rown out. It can't go into evidence. And denies a motion for new trial. That the irl had a mother and sisters and brothers Vietnam. Now we've been trying for years get this blood test on this girl to find

he truth whether I should put on a defense
r not, even though I'm -- you don't hurt
our family from Vietnam. Vietnam families
re so tight it's pathetic. If she would
ave had counseling or the blood test, there
ould never have been an arrest of me in the
irst place.

THE COURT: Well, I think the issue is
eally as to whether you, whether there was
ufficient evidence to convict you of what
u're alleged to have done. And, uh, I'll
t it quite up - right up front. If in
ct, uh, a person is, uh, harmed, whether
at person be an illegal alien, whether he
a convicted, uh, felon or so forth, uh,
a criminal act was done against that
rson, um, in this country the person doing
e act is still - has to be responsible
der the law, regardless of the sttus of
at particular victim, individual.

MR. BLY: I realize that, You Honor.
t the question of child abuse. What was
is girl's age? Or whether in fact she was

///

n her twenties, which is wht I've been finding out, she's 25 now.

THE COURT: Do you have any proof as to hat her age is?

MR. BLY: She was 2Ø at the time the lleged thing occurred.

THE COURT: Well, that's an allegation.

MR. BLY: But I can't prove it. It's ust rumor. They could not substantiate her ge. I tried through the blood test. here's no blood test known to man to ubstantiate the age.

THE COURT: Well, blood test I don't uppose would substantiate an age.

MR. BLY: Excuse me?

THE COURT: I suppose the blood tst yor may not substnaite an age. I suppose it could, it would.

MR. BLY: They couldn't.

THE COURT: Okay, Couldn't. I'll take ur word for it.

MR. BLY: All they could do is cut out bone and check it. And that's

unacceptable for somebody alive.

THE COURT: All right. Anything else?

MR. BLY: No. sir. Your Honor.

FATHER CAMMACK: Yougonna call me?

(Another criminal matter was handled.)

(LUNCH RECESS)

THE CLERK: Stand, Please.

THE COURT: Be seated, please, Mr. Fallin, could you articulate why you're interested in, uh, the records that you summoned from the Department of Social Services in Anne Arundel County?

MR. FALLIN: I, I thought you might wanna know, Your Honor. It7s my theory that the , the Vietnamese couple whom I'll refer to as the in-laws, uh, Mrs. Bly's brother and his wife, uh, for a lot of reasons wantd to get out of the Bly household. They, they came--they escorted the prosecuting witness in this case from Vietnam to B. W. I., immediately started living in the Bly home, became very, very dissatisfied with that and, um, started making efforts to getout. And part of that, we believe, was to make false

(Another criminal matter was handled.)

(LUNCH RECESS)

THE CLERK: Stand, please.

THE COURT: Be seated, please. Mr. Fallin, could you articulate why you're interested in, why the records that you summoned from the Department of Social Services in Anne Arundel County?

MR. FALLIN: I, I thought you might wanna know, Your Honor. It's my theory that the, the Vietnamese couple whom I'll refer to as the in-laws, uh, Mrs. Ly's brother and his wife, uh, for a lot of reasons wanted to get out of the Ly household. They, they came--they secured the prosecuting witness in this case from Vietnam to D. C., I, immediately started living in the Ly home, became very, very dressed with that and, um, started making efforts to get out. And part of that, I believe, was to make false

statements about alleged abuse of them by Mr. Bly and perhaps--depending how the case--the State case unfolds--also, uhm false statements about Mr. Bly's alleged abuse of the girl. Okay? And as part of their effort to, to get out, um, they committed welfare fraud. They moved to Anne Arundel County. They misrepresented to the Anne arundel County Department of Social Services that they were eligible. They specifically falsified their, their financial wherewithal. And the records you've reviewed, which I assume show their disclosure that they had no funds or had minimal funds, uh, are in fact, i believe, going to be contradicted by the bank records which we've subpoenaed. Which we believe will, will show that htey had substantial funds. At least funds in excess of what they declared therein. And we think it's material and probative here,

because it's, it's indicia of this scheme to get out of the Bly, Bly household, uh, by discrediting Mr. Bly particularly and thereby obtaining the assistance of the Howard County Department of Social Services. And by moving to Anne Arundel County, the Anne Arundel D.s.S. So that's the one shoe. The other shoe is the, the bank records. I, of course, have not seen them. Haven't spoken to anybody who has, but I'm given to understand that, uh, they reported to -- on those records that they --

THE COURT: Well, even if we assume, just for the sake of argument, that they did commit welfare fraud, that wouldn't be admissable in this case.

MR. FLLIN: Well --

THE COURT: As a collateral matter, we can't try that.

MR. FALLIN: Your Honor, we're contending that the allegations of

child abuse against Mr. Bly were part of this scheme to get out of the house, as was the, the welfare fraud. The alleged welfare fraud. Part and parcel of the, of the whole thing. So these are State's witnesses, I presume, who, who have an interest which I believe can be proved (unintelligible few words) extrinsic evidence as to this interest that would cause them to testify here as part of these scheme, um, to flsify the record.

THE COURT: Would the State like to be heard?

MS. OSTOVITZ: Your honor, quite frankly, I don't see the connection. It's my understanding that the reason the in-laws, let's say, left the house was at the request of the defendant. But additionally, I would indicate that the State does not intend to call these two persons in the State's case anyway. But even so, I don't -- I don't see the

connection that's being argued by Mr. Fallin.

THE COURT: Well, that would be the--

MR. FALLIN: I've learned now at this moment that the State doesn't intend to cll them, but we, we still--our defense is still that this--the, the allegations grew out of this, this scheme to discredit and, and, uh, make trouble for Mr Bly. And part of that was to, uh, to make these representations, false representations, both, both to the Howard County authorities --D.S.S and the police department--and to the, the eligibility office in the Anne Arundel D.S.S. So whether or not they're called or not, uh, we think it's extrinsic, um, evidence of, of how the, the charges came about.

THE COURT: I think it's too far afield to go into that. The custodian of the recordfrom Anne Arundel County come

connection that's being argued by Mr.

Fallin.

THE COURT: Well, that would be the--

MR. FALLIN: I've learned now at this

moment that the State doesn't intend to

ll them, but we, we still--our defense

s still that this--the, the

llegations grew out of this, this

cheme to steal and, and, uh, make

rouble for Mr Ely. And part of that

as to, uh, to make these

epresentations, false representations,

oth, both to the Howard County

uthorities --D.S.S. and the police

epartment--and to the, the Deputy

ffice in the Anne Arundel D.S.S. So

hether or not they're called co, not,

r we think it's extremely, we,

vidence of, of new type, the burden

s about.

E COURT: I think it's for a jury to

o decide that. The question of the

ourt from Anne Arundel County come

forward I've gone through the records and there isn't anything that would be helpful to your client in the, uh, in the records.

MR. FALLIN: Your Honor, we're not contending that there's anything it is--that is onits face, uh, either exculpatory or incriminating inculpatory of the subject of those records. We're saying that the combination of that plus bank records plus the testimony we're prepared to adduce would show that there, there was a fraud perpetrated on...

THE COURT: Well, I couldn't permit that. That isn't relevant evidencein this case.

MR. FALLIN: Well, let me, let me go further, Your Honor, May I approach?

THE COURT: Yes, sir.

BENCH CONFERENCE

MR. FALLIN: In support of this theory, Your Honor, we have a witness who will

testify that the sister-in-law (inaudible) perhaps by the end of the case I can articulate these names. A witness will testify that the sister-in-law admitted to the witness that she, the sister-in-law, procured fraudulent charges made by the prosecuting witness. That the sister-in-law, wielded sustantial influence over the girl, procured the girl's charges against Mr. Bly falsely as part of this scheme of hating Americans, of getting out of the very, very modest home of the Bly's. And we submit that that's partof the-- that was one of the things they did in fruition of the scheme. Which was to get out and, uh, through fraudulent means to obtain public benefits. In this case, food stamps.

MR. BLY: Could I say something?

THE COURT: No, no.

MR. FALLIN: It's just argument.

testify that the sister-in-law (inaudible) perhaps by the end of the case I can articulate these names. A witness will testify that the sister-in-law admitted to the witness that else, the sister-in-law, procured fraudulent charges made by the prosecuting witness. That the sister-in-law, wielded substantial influence over the girl, procured the girl's charges against Mr. Bly falsely as part of this scheme of hating Americans, of getting out of the very modest home of the Bly's. And we submit that that's perjury the -- that was one of the things they did in furtherance of the scheme. Which was to get out and, uh, through fraudulent means to obtain public benefits. In this case, food stamps.

MR. BLY: Could I say something?

THE COURT: No, no.

MR. FALCON: It's just argument.

MS. OSTOVITZ: Your Honor, my response is still the same. Even assuming that--even assuming-- and of course I haven't seen the records either--that there was something in there that would, could potentially be used to impeachor discredit these witnesses, as I said, the State does not intend to call them. And evidence of an alleged welfare fraudI don't see as relating to...actually credibility not being even and issue when they're not called as witnesses.

MR. FALLIN: This goes to the credibility also of the prosecuting witness. If we--if we establish a nexus between the sister-in-law, who lived in the same household with her, who lived with her in Vietnam, uh, we can certainly establish that there's a substantial influence there. If we established that and then we established that the sister-in-law

MS. DOTOVITZ: Your Honor, my response is still the same. Even assuming that -- even assuming -- and of course I haven't seen the records either -- that there was something in there that would, could potentially be used to impeach or discredit these witnesses, as I said, the State does not intend to call them. And evidence of an alleged welfare fraud I don't see as relating to -- actually credibility not being even and issue when they're not called as witnesses.

MR. ROLLIN: This goes to the credibility also of the prosecuting witness. If we -- if we establish a nexus between the mother-in-law, who lived in the same household with her, who lived with her in Vietnam, uh, we can potentially establish that there's a substantial influence there. If we established that and then we established that the mother-in-law

admitted against penal interst that she hd suborned perjury, had procured a fraudulent charge made by the prosecuting witness, uh, it's...

THE COURT: Well (inaudible)

MR. FALLIN: ...an impeachment of the, of the prosecuting witness.

THE COURT: I'll keep the, uh--what are you interested in , the application--

MR. FALLIN: Just--Your Honor, just the statement of assets. I'm not familiar with the forms there, but they had to declare under penalties of perjury what hteir assets were.

MS. OSTOVITZ: Even assming some...

THE COURT: (inaudible)

MS. OSTOVITZ: ...some (inaudible) inappropriate by the aunt, I don't think that can be attributed to the victim in this case anyway.

MR. FALLIN: Your Honor, if the, if the aunt says it was done, says thatshe procurd fraudulent and false

committed against penal interest that she
had suborned perjury, had procured a
fraudulent charge made by the
prosecuting witness, Mrs. Iff...

THE COURT: No! (inaudible)

MR. FAULIN: ...an impeachment of the
of the prosecuting witness.

THE COURT: I'll keep this, whatever are
you interested in, the application--

MR. FAULIN: Just--Your Honor, just the
statement of a people. I'm not familiar
with the forms there, but they had to
declare under penalties of perjury what
their assets were.

MS. OSTOVITZ: Even assuming some...

THE COURT: (inaudible)

MS. OSTOVITZ: ...some (inaudible)
inappropriate by the wit, I don't
think that can be attributed to the
victim in this case anyway.

MR. FAULIN: Your Honor, if the, it the
Court says it was done, says that's the
procured fraudulent and false

statements, perjurous statements by the, uh, by the victim, um, I can't imagine how that wouldn't come in.

THE COURT: Could you recess just a second and see if you can get a law clerk?

(off record pause)

THE CLERK: One second let the two jurors walk through.

THE COURT: Oh, okay.

MR. BLY: There's another one.

MR. FALLIN: Another juror.

THE CLERK: Walk on through...

MS. OSTOVITZ: (inaudible) Make a right

THE CLERK:...back to the petit jury room.

MS. OSTOVITZ: You'll see the jury room back there.

(pause)

THE CLERK: Thank you, Your Honor.

THE COURT: Yes, sir, Thank You.

MR. FALLIN: There's, there's another point Mr. Bly's pointed outto me. He

statements, perjurous statements by the, uh, by the victim. Um, I can't imagine how that wouldn't come in.

THE COURT: Could you recess just a second and see if you can get a law clerk?

(Off record pause)

THE CLERK: One second Jeff. Time two before we walk through.

THE COURT: Oh, okay.

MR. BLY: There's another one.

MR. FAULIN: Another juror.

THE CLERK: Walk on through...

MS. DEFOVITZ: (Inaudible) Make a right.

THE CLERK: ...back to the petit jury room.

MS. DEFOVITZ: You'll see the jury room back there.

(Pause)

THE CLERK: Thank you, Your Honor.

THE COURT: Yes, sir. Thank you.

MR. FAULIN: There's. There's another point Mr. Bly's pointed out to me. He

had accepted responsibility for these people. So they, in order to, to get out from under his wing so to speak, they, they had to show tht that link was broken somehow and, and they had to show tht they were being, you know, constuctively or otherwise kicked out, uh, by Mr Bly. So, um, it isn't just a matter o, you know, them being free to take off and free to go to Social Services to get benefits. They had to get, to get clear, if you will, of mr. Bly in order to do it.

THE COURT: Could you make photocopies of both sides of these documents?

UNKNOWN FEMALE: Okay.

Q. When you speak-- if i may, Yourhonor.

THE COURT: Yes.

Q. Speak into the microphone, okay , and try to keep your voice up so we can hear you. That chair won't move forward.

MS. OSTOVITZ: May I, Your Honor?

THE COURT: Yes.

BY MS. OSTOVITZ:

Q. Would you spell you name so that our clerk can get it properly?

A. N-G-O-C D-O-A-N.

Q. Ngoc, how old are you?

A. I'm seventen now.

Q. You're seventeen now?

A. Umm hmm.

Q. And when was your birthday?

A. January 26.

Q. What year?

A. 1970.

Q. Okay, And who do you live withnow?

THE CLERK: Excuse me, Mis Sorg, Mam, you're gonna have to kep your voice up so that all those people over there can hear you. They're having a little bit of a problem.

THE WITNESS: Okay.

Start page 1-51

A. January 2nd.

q. January 2nd?

A. Yeah.

Q. Of what year?

A. 1996

Q. Eighty-six?

UNKNOWN MALE: Turn that volume up (inaudible)?

THE CLERK: These are not amplified systems.

UNKNOWN MALE: They're not?

BY MS. OSTOVITZ:

Q. Ngoc, what country did you come to the United States from? And please almost yell at me, okay? So we make sure everybody hears this.

A. I'm from Vietnam.

Q. From Vietnam? And who is your mother?

A. Tieng Doan.

Q. Can you spell her name for us so the clerk can get that right, too?

A. Yeah. T-I-E-N-G D-O-A-N

Q. T-I-E-N-G D-O-A-N, right]?

A. Yeah.

Q. Okay. And do you have a stepfather also?

A. Yeah.

Q. Who is tht?

A. Raymond Bly.

start page 1-53

A. They have better life and better school.

Q. Better life and better school?

A. Yeah.

Q. Okay. Now when you came to the United States, your mother was here, is that right?

A. Yeah, my my mother's here already live here.

Q. Your mother was here already?

A. Yeah.

Q. How long had your mother been here?

A. About ten year. I don't remember.

Q. About ten years? And before you came to the United States, who did you live with in Vietnam?

A. I live with my aunt in Vietnam.

Q. With your aunt?

A. Yeah.

Q. What was that aunt's nme?

A. Her name (unintelligible)--Vietnamese name. She still live in my country.

Q. She's still in Vietnam? That aunt is?

A Yes.

Q. Okay. When you came to this country, did anyone else come with you?

A. My aunt and my uncle.

Q. Your aunt and your --

the court: Excuse me. Why don't we take a brief..,

start page 1-56

A. Yeah.

Q. Okay. And when you came to this country, did you know anyone else here?

A. No. only my mother.

Q. Only your mother?

A. Yeah,

Q. Okay. Now when you and your aunt and your uncle and your cousins came here, who did you live with?

A. I live with my mother and my stepfather.

Q. Where was that?

A. In Jessup.

Q. Do you know the address there? Do you remember that?

A. Yeah, I guess. (unintelligible) 87 Washington Boulevard, Jessup, Maryland.

Q. 8Ø87...

A. Yeah.

Q. ...Washington Boulevard. Do you know what county that's in?

A. Yeah, Howard County.

Q. Okay. And who all lived at that house when you got here?

A. My mother family and my uncle and me.

Q. Your mother's family?

A. Yeah.

State your name for the record please?

Your name?

THE WITNESS: Ngoc Doan. N-G-O-C D-O-A-N.

DIRECT EXAMINATION

BY MS. OSTOVITZ:

Q. Ngoc, when you testified yesterday, you talked aout the people who lived in the household that you came to when you came to the United States. We're gonna go through that again so we can make a list of them, okay?

A. Yeah.

Q. Okay, now spell your name for us, will you?

A. N-G-O-C

Q. And your last name?

A. D-O-A-N.

Q. And what was your mother's name you told us the other day?

A. My mom?

Q. Your mother.

A. Tieng Doan

Q. Will you spell that for me?

A. T-I-E-N-G.

Q. Umm hmm.

A. D-

Q. D?

A. Yeah, O-A-N.

2-23 T-20

Q. And that is your mother?

A. Yeah.

Q. You also told us the name of your stepfather. Who was that?

A. Raymond Bly.

Q. Do your mother and Raymond Bly have children?

A. Yeah.

Q. Okay, what are their names?

A. Linda.

Q. Okay.

A. Curtis.

Q. Curtis?

A. Yeah.

Q. Umm hmm.

A. Christina.

Q. Christina. Okay, you also said that your aunt and uncle came with you from Vietnam.

A. Yeah.

Q. Right?

A. Yes.

Q. What's your aunt's name?

A. Minh.

Q. Spell that for me.

A. M-I-N-H

Q. M-I-N-H. Okay.

2-45 T-21

A. He told me-- he told me everything. You know, sometimes he told me something to do and go with him. And then sometime I don't feel good, when I get up, come home from school, sometime I get a headache. And I didn't want to

go. And then sometime I feel good, I go with him.(unintelligible) I obey him what he told me to do, because I think he my father. Because in my country the children, they have respect for the older people. They told you what to do, you have to do.

Q. What, what did you call your stepfather at home?

A. I call my stepfather "Daddy".

Q. When did you start calling him "Daddy"?

A. I don't remember, but when--because he-- I hear the people say, if the father--they didn't make the paper adopt you, but you, you didn't (unintelligible) the paper, and then he not really my father. And then we can call him stepfather, but I live in the house with him and my mom. I call him (unintelligible) and I respect him (like?) my real father.

Q. Okay. Well, you understood. Are

you getting upset? You can stop. I mean, if you don't feel well, you just tell the Judge, okay?

A. Okay.

Q. Now I was trying to find out when you first called your stepfather "Daddy".

2-46 T-22

A. First time I come United States.

Q. You came into the airport?

A. Yeah.

Q. Baltimore-Washington International. Then when you saw your stepfather, you immediately called him "Daddy"?

A. No, after I come home. The next day.

Q. Oh, the next day.

A. Because the first time I see him, when I see him-- my mom said when I see him I a little baby in my country. Then for a lon time I come and see him. I mean, this is the first time I see him, because I saw him in a picture,

but the really, not really (unintelligible). And then that is the first time i see him in the airport.

Q. And what did--by what name did you refer-- or how did you refer to--what did you call your mom?

A. I called her "Mom".

Q. When did you first call her "Mom"?

A. I called her mom...

Q. When? Immediately when you got here from Vietnam or...

A. Oh, I-- .

Q. ...after a while or--

A. While still in Vietnam. I write a letter to my mom here. I tell her-- I call her, I call her mom.

MR. FALLIN: Just a minute, Your Honor.

2-47 T-23

(pause)

BY MR. FALLIN:

Q. Did you write your mom from Vietnam frequently, often? When, when you were living--

A. Sometime I write and sometime I won't, because in my country I'm study from Monday to Saturday and sometime Sunday. I go school. And i don't have time to write a letter, because I have study Every day I have study and coming school. And you have to remember what the teacher taught you from yesterday. When they ask you, you have to remember. And I study from Monday to Saturday, because my country we fo school Monday through Saturday. And only Sunday stay home. But on Sunday I take some geometry and algebra or go study some more extra time.

Q. Okay. So because of the, the load, the burden of going to school in Vietnam, I take it you did not write

your mom as often as you wanted to.

A. Yeah, I write letter, but it took-- I write a letter. Also in my country, it too expensive for to write a letter. You have to pay about hundred dollar for the letter letter to come United States.

Q. To, to get a letter to the United States is very expensive?

A. Yeah.

Q. Did you ever know whether or not your stepfather

2-48 T-24

and your mom were sending money to Vietnam for you?

A. Yeah, I know. But that for the food and the clothes I wear. My mom sent money. Half my--half the--and the one I live with (unintelligible) food eat. Sometime they have the money to send a letter to my mom here. Thay why sometime they send and write letter and sent to my mom.

Q. Just in case in it ever comes up, with which aunt did you live in Vietnam?

A. My mother older, older sister.

Q. How did you reer to her?

A. Hmm?

Q. Would you refer--how--what did you call her?

A. I call her mom too, because when my mom leave, I'm little. So little.

Q. Did you know who your, your real mom was?

A. Yes.

Q. Who was that?

A. Hmm?

Q. Who was it? Who did you believe was your real mom?

A. I see my mom one time. I remember one time.

Q. You mean your mom here?

A. No, you asked did I have a real mom. Yeah...

Q. Yeah.

A. ...I have a real mom.

Q. Okay. And who was your real mom?

A. My mom here. My, uh, little--my mom littlesister the one, uh, his wife, my stepfather wife. And her little sister. She older than mom, my mom.

Q. Do you know what I mean by "your real mom?"

A. Yeah, my real--

Q. The--your mom who gave birth to you.

A. Yeah, my mom birth me.

Q. Okay. Now-- and who was that? Who did you understand that to be?

A. The one already die.

Q. Okay. So you thought your real mom had, had died?

A. My mom, she already die.

Q. Back in Vietnam

A. Yeah. And this one, she take care f me, when I a little girl when my, my real mom, she born me and then this one

take care of me. Then I--because I baby, I can see a real mom. But later on they told me that I have a real mom and my mom die. (witness crying)

THE COURT: All right, why don't we take a fifteen minute recess. Ladies and gentlemen, we'll take a fifteen minute recess.

THE CLERK: Stand, please.

2-58 T-26

of your, your parentage, your mother, your understanding of who your real mother is or was. What else do you know about your real mother?

A. My mother, she, she come to see me one time and she come back again. She, she come back her job and, and she die. I see her one time.

Q. Did, did your, did you understand that your mother was, uh--she worked with or served with--

A. I don't--

Q. Excuse me?

A. I really don't know because I see her one time. That's it. She coming back, she saw me one time, and she come back her job and she died. And then they told me that my mother die. And then they carry my, my mom body, come back to my house, and I see mommie and mom dead.

Q. Do you mind telling us how old you were at that time?

A. About five or six year. I--I about, yeah, about five or six year old. And please don't ask me any, anything my mom. I don't want remember my mom. It make me get upset. (unintelligible few words)

Q. I'll try to keep it very short about your mom, okay? (pause) Did you understand that or believe that your real mom had served with or had, had supported the Vietcong in Vietnam?

A. Mom, my mom didn't told me that.

Q. I'm sorry?

A. My, my real mom, she didn't told me that, because she come back. But I saw her and then I talked to her, but I'm scared to see her, because she didn't take care of me when I little. And she was live with me. I didn't, I didn't (unitelligible) live with me. And then the next day she leaving and long--I don't know how long--then they told me my mom, she was sick, she lie down the hospital. And then my uncle take me to to see my mom. And when I get, when I get in the hospital, they say, they (un- take---my mom already die. And they take my mom to the--my aun'ts house. And then whenI come back and my, my mom lie down on the bed and my aunt ask who is it, I say "That my mom." (pause) I don't want talk about my mom anymore. And please don't ask me.

Q. All right. Well, let's, let's talk about some-- something alittle different. Did you ever receive any I. D. card, identification, while you were a child in Vietnam indicating that you were the family--the daughter of someone who had served withthe Vietcong?

A. Yeah, they daid my dad.

Q. Oh,

A. But my, my dad die when I never born. I in my mom7s stomach. But my dad die and I didn't see my dad. I don't know.

2-62 T-28

Q. ...when you were small.

A. Yeah.

Q. In Vietnam. Okay. Now who, if you now, took care of you after that?

A. I still have a (grandfather?) and, and my, my aunt still live in Vietnam now. They both touk care of me and when my, my aunt die--my, my,

(grandfather?) die, and then my aunt, she take care of me from that and until now. Until I come United States.

Q. And the aunt that you called mom...

A. Yeah.

Q. ...was the aunt who took care of you just before--who was taking care of you just before you left Vietnam, is that right?

A. They--I think every people who took care of me, I think they are my mom, because they give me the love like the real mother give the daughter love.

Q. Was there more than one person that you called mom while you were in Vietnam?

A. I--only the one and here I call mom.

Q. Okay.

A. Because the other one, they didn't take care of me.

Q. Now the, the time before you left Vietnam, of course after you found out that your real mother had died

or smoething, after that--during that period of time from your mother's death until you left Vietnam, was that a happy time for you?

A I see my mom--(untelligible). I don't know, because I my--I saw my mom, because one time I remember--she didn't take care of me anything. I just saw her one. But the one I live with her, she still living in Vietnam. I just--I think her, that's my mother. And the one over here, she had the money and help me and I think that two--I have two mother take care of me.

Q. Now, do you ever refer to your, your mom here in the United States as an aunt?

A. No, because--uh uh, because she send the money and help me get some food and some clothes and take care of me. And also she and him make--she make the paper take me over her.

Q. Okay. So in the, in the letters that you sent--

A. I call her mom.

Q. Call her mom. And you never called her aunt?

A. Uh uh.

Q. The Vietnam word for aunt.

A. You ask my, you ask his wife did I call, um, my mom here aunt. Umm umm. You ask my uncle too.

Q. What, what is the Vietnamese word for mom?

A. Ma, M--A

T-30

is a letter that is certainly not in English.

BY MR. FALLIN

Q. Could you tell us what that is?

A. What you want me to do?

Q. Excuse me?

A. What do you want me to do?

Q. Well, could you tell me what, what that is?

A. Oh, you want me to tell you in English?

Q. Well, you don't have to translate it for us, but, okay, is that--

A. I have read 'em.

Q. Pardon me?

A. I have read 'em first.

Q. You have to--well, let me ask you a couple things before you read it. Is that a letter written by you?

A. Yes.

Q. Okay, you wrote it.

A. Yeah, I wrote.

Q. Is it in your handwriting?

A. Yes, I guess.

Q. And to whom is the letter written?

A. To my mom here.

Q. Okay, And how do you address your mom in that letter? Do you say "Mom" in the letter...

2-98 T-31

A. Yeah.

Q. ...in Vietnamese?

A. I say Mom.

Q. Do you refer to her anywhere in that letter as "Aunt" as "Di"?

A. I didn't (unintelligible) down.

Q. Excuse me?

A. I didn't write aunt. I say "Ma", "Mom" down. I write--I write Mom. One the--first thing I say "mom," M-A.

Q. Okay. And nowhere in there does it refer to the word for --

A. No aunt.

Q. ...for aunt?

A. Yeah, I'm sure.

Q. All right. Would you take a moment, if you need to, uh, to look at the letter. Do you not say in that letter that you do not wish to come, you don't want to come to the United States?

A. You have give me time to read it.

A. Sure. As it--as you need.

(pause while witness read letter)

A. Okay.

Q. Okay. Now, take your word for it,

does that letter say--do you say in that letter that you do not wish

T-32

ever say to any of the Bly family members that, that you had heard or learned while in vietnam that American men would have sex with their, their Vietnamese wive's daughters?

A. No. When I come here, I know.

Q. Okay, And you never heard that before you came here?

A. Yeah, I never heard.

A. Did you ever hear anything else about American men being bad while you were in Vietnam?

A. I hear about soldiers come my country and take my country over. And I know that, but I didn't--they didn't teach--they didn't talk about how the American did to the Vietnamese.

Q. Now once you got to this country, did I understand you, one of the reasons that you wanted to come here

was because of the schools in America?

A. Because I want to see my-- First, I want to see my mom and second, this is better living and have a good system in school.

Q. Okay. You had heard in Vietnam that American has a good school system.

A. Yeah, and they have a good--better living.

Q. Excuse me?

A. They have a good living here. You know.

2-117 T-33

know that my real mother--I see my real mother and she already dead. And then I come here and I thought and I thought she my mother, too, because she take care of me and she make favor and pay the money for me come United State to live withher.

Q. Now is it correct that for the first, uh, first few weeks after you arrived here that, uh, you, you went to

bed every night and cried?

A. Yeah, I'm cry--I'm crying.

Q. And that was because you were unhappy about leaving Vietnam.

A. Yeah, I miss my mom, the one I live in my country.

Q. Now was it, was it soon after you came here that, uh, you found out about the test and not eating out of the same dishes with other people and so forth as you were saying a moment ago? Was that soon after you arrived here?

A. After I arrive here, I go to take a test, go to clinic.

Q. So, so are you saying that was soon? I mean within a, within the first month after you arrived here, would you say?

A. I really don't remember, but I remember first I come United States a little while. And my stepfather take me go to clinic.

Q. Now once you got here, who was the--of all the people in the

household, in the Bly home, who was the one

4-44 T-34

MR. NGUYEN: Yes.

THE COURT: When --

MR. FALLIN: I, I do know we're gonna him.

THE COURT: Yes. But that, that would not be right away, would it?

MR. FALLIN: Not --No. He'd...

THE COURT: It may not be for hours.

MR. FALLIN: ...be hours. So, yeah.

THE COURT: Yeah, we'll call him when we need him.

MR. NGUYEN: And I will come very easily.

THE COURT: Right.

MR. NGUYEN: Just five minute, ten minute.

THE COURT: Fine. Thank you very much.

MR. NGUYEN: Thank you, Your Honor.

THE COURT: Yes.

ROBERT BATES,

a witness called on behalf of the State, having first been duly sworn, was examined and testified as follows:

THE CLERK: Be seated. State your name and address.

THE WITNESS: Police Officer Robert W. Bates, Howard County Police Department, curently assigned to Field Operations, Patrol Division, Ellicott City.

DIRECT EXAMINATION

BY MS. OSTOVITZ:

4-48 T-3S

Howard County Police Headquarters, along with Mr. Michael Marshall, Department of Social Services. The meeting was at the request of Mr. Bly. We entered into the, uh,building. I opened up the conversation with Mr.

Bly, uh, in asking him to tell us about the family problems that he was having, uh,at home. Mr. Bly started out by stating that the --ever since the first day that his family met Ngoc Hong Doan at the airport in February of 1985, that Ngoc did not like he nor his wife, uh, along with their three children. He went on to say that they had tried to show love to the child and to make her part of the family unit. That the child, based on what he said, would have no social interaction with the children as described by Mr. Bly. He went on to say that the child Ngoc Doan would always speak in Vietnamese and not in English and she would stay with her aunt and uncle who were also living in the same house. Mr. Bly went on to describe the--that the child, Ngoc Hon Doan, uh, was his wife's natural child, however, Ngoc Doan was told years ago that the--her mother, uh, was not her

and that she has been killed, um, at the end of the war in Vietnam. This was done to protct her, because of the new Vietnamese government. She was also told that her mother was Vietcong. In talking about the child's behavior, Mr. Bly went on to state that the child was very hard to control. She was very hard

IN THE CIRCUIT COURT FOR

HOWARD COUNTY, MARYLAND

STATE OF MARYLAND

VS. Criminal No. 15Ø71

RAYMOND J. BLY

Defendant

_____/

REPORTER'S OFFICIAL TRANSCRIPT

OF PROCEEDINGS

(Motion for Reconsideration of Motion for New Trial)

Ellicott City, Maryland

Tuesday, May 22, 1990

BEFORE:

HONORABLE J. THOMAS NISSEL

APPEARANCES:

For the State:

LILLIAN CLARK, ATTORNEY

For the Defendant:

RICHARD KOVELANT, ESQUIRE

LESLIE J. CALE

Official Court Reporter

Court House

Ellicott City, Maryland T-36

PROCEEDING

MS. CLARK: Good Afternoon, judge Nissel.

THE COURT: Good Afternoon.

MS. CLARK: Lu Clark on behalf of the State. We're called 15Ø71, Raymond J. Bly. I believe this is in for a motion to reconsider a denial of a motion for a new trial.

MR. KOVELANT: Good afternoon, Your Honor. That's correct. For the record my name is Richard Kovelant. Seated at counsel table with me this afternnon is my associate, Barbara Kovelant, and the defendant, Mr. Bly.

THE COURT: Good afternoon.

MR. KOVELANT: If I may proceed, Your Honor.

THE COURT: Yes. Jm hmm.

MR. KOVELANT: Your Honor may recall. Your Honor issued and order

denying defendant's motion for new trial sometime in February of this year. Present motion before your Court is seeking a reconsideration of that Court's order as it pertains to Mr. Bly's conviction of child abuse, forth degree sex offense, and assault and battery on an individual identified in an indictment named, uh, Ngoc, for the purposes of our hearing here this afternoon. If Your Honor please, most motions for new trial seem to take the form of sour grapes in the sense that someone's obviously upset with sufficiency of evidence of proof that was adduced at trial. The tact this morning, or this afternoon rather, Your Honor, that we would like the Court to consider is really two-fold in reviewing its previous order. The court may recall subsequent to the trial and subsequent to the time this matter went up to appeal in the Court

of Appeals, Mr. Bly, through discovery in a civil proceeding, was able to have blood test conducted on the complinant in this particular case. Those blood tests which were submitted as part of his motion for new trial clearly indicated that the individual identified as his daughter during the pendency of this trial was clearly not his daughter and in fact is still an individual whose name is unknown to Mr. Bly. It was that evidence, Your Honor, that Mr. Blytried to present to the Court in the course of his motion for new trial, but I think failed at last in part because of his own pro se defense to accurately articulate the basis for why this evidence was necessary and important. And that's why we're here this afternoon. The evidence that was proffered at that hearing on the motion for new trial, Your Honor, demonstrated, as I

indicated earlier, that the complainant, whose tstimony was I would say probably ninety-five if not almost a hundred percent responsible for the conviction, indicated the she was the natural daughter of Mr. Bly's wife, which would have made her, if she was to be believed, the stepdaughter of Mr. Bly. Although this individual, no one disputed, was in the care and custody of the Blys at the time the incident occurred, the materiality of the claim that this was the wife's daughter and hence Mr. Bly's stepdaughter became clear during the trial and the importance of that particular factor. I call your attention, Your Honor, to the fact that the indictment in this case read that Mr. Bly was being charged at the time of the trial with the specific offense against a spcifically named individual. And that named individual was a, a girl, a young

girl that identified herself as Ngoc. And she assumed that identity, Your Honor, during the course of that trial and maintained the presence on the stand that it was her. It wasn't until aftr the trial that evidence was discovered or was able to be discovered that indicated that Ngoc was not in fact Ngoc;

that Ngoc was somebody else. In short, the indictment and the conformity of proof, Your Honor, is one thing we, we'd like the Court to rectify by virtue of granting a, anew trial in this matter Mr. Ely is certainly entitled under all due process considerations, the constitution, and the cases that I7ve cited in our memorandum, particularly Hudson case, to be confrontd with his accused and have the indictment confrom with the proof. In this case, the indictment certainly doesn't conform with the

proof that was a product of the newly discovered evidence as it, as it turns out. The indictment and proof adduced at trial and the sufficiency of evidence to convict, uh, clearly points to an incident that occurred with another individual not named in the indictment and even potentially named today. moreover, Your Honor, in looking at a motion for a new trial, I call the Court's attention to York vs. State. That's found at 315 Maryland 578. And the standards that were adopted by the Court of Appeals in this 1989 decision say that newly discovered, newly discovered evidence may well have produced a different result but what the trier--than what the trier of fact obtained. What the Court has to determine on a motion for new trial is whether the conviction--if this newly discoverd evidence is weighed and considered against that

which was adduced at trial--would have a likelihood or a probability of resulting in a conviction. And i would certainly suggest, Your Honor, where a specific offense is alleged as to a specific individual who spent four days on the stand perjuring herself as to her true identity and name, that this would have an absolute significant impact on Mr. Bly's ability to have gotten a fair trial then and certainly would permit him, if the new trialwas gantd, to at last have the opportunity to have a fair trial now in light of the evidence that we, we've brought forward. In Hudson versus State, Your Honor, 202 Maryland 333, a 1953 decision, the Court recognized that a variance between a popular name and a given name would not necessarily be fatal t an indictment. In other words, if the indictment reads Tommy and the true individual that's named in the

indictment is Thomas, there's not a problem. What we have here, Your Honor, is a charge in a, in an indictment which clearly states that Mr. Bly was charged with these offenses against an individual and then found guilty of committing these offenses against another individual. There was certainly no right of confrontation; there was no ability for Mr. Bly to have determined this any--these facts any earlier than he had and bring it forward in the course of the trial. Nor was there any bility for Mr Bly to put on an adequate defense as to the true age and identity of this person. Because again, he assumed, if the Court may recall the facts, that this was in fact his daughter--his stepdaughter--although there was some substantial question in his mind, having not seen her since he left Vietnam. And the girl was

approximately a year, eighteen months old at the tme. Your Honor, we set forth in rather detail, and I won't belabor and try to retry this case again this morning. That's not the purpose that we'e here for. The purpose we're here for, Your Honor, is to have this Court take a, a good stong look again, if it will --and I, I know that htis Court and this Judge, as well as Judge Fischer, has been involved and has taken several looks at this file--but to really consider what's gone on here. Here's a man, after a course of action's been taken, aftr tril has been completed, turn up evidence that goes to the very heart of the charges and the very heart and essence of the conviction. That the person that on--was on the stand was not the victim that the State was requird to produce and prove was victimized by Mr. Bly in the events

that allegdly occurred. That's fundamental, Your Honor, to everything and every notion of fair play, equal, uh, excuse me, due process and equal justice. What Mr. Bly has determned by virtue of these blood tests, all after the fact, all after the fact, is that the individual and the victim are not one and the same. The person in this court was not hte person that he was charged with assaulting. And where the indictment has to specifically name that particular individual, otherwise we'd hav a to whom it may concern indictment or a John Doe alias under all circumstances, the State merely, in light of this newly discovered evidence, didn't meet its burden. It's not whether or not there was sufficient evidence at trial, since none was presentd on Mr. Bly's behalf. The testimony stood. What this Court must do is to weigh the newly discovered

evidence aginst that which convicted him and determine whether that evidence, if allowed to be presented to a new jury, a new panel, would have resulted in a probability or a likelihood of acquittal. And I strongly suggest, Your Honor, this is not merely a question of a name change. This is a qustion of an assumption of an identity. An essential element in this particular case was the fact that this person was alleged to be a minor, to come under the child abuse statutes. Without knowing her true identity to this day, but certainly knowing her true identity is not what she was purported to be and one in which she in fact assumed, could mr. Bly in a situation of defending against charges brought in name by one individual in an indictment and tried by another on the stnd And for those reasons, Your Honor, we respectfully submit that Mr.

Bly should be entitled to new trial. Now the practicalities of this thing become somewhat unusual. Mr. Bly, as Your Honor knows, is currently on a three year supervisory probation and essentially has one year to go. Mr. Bly has not been incarcerated since the initial arrest and spent essentially five days in jail and been and exemplary person since then. He's pursued this case as dilightly as, as he can in a pro se manner. Mr. Bly's commitment to this, Your Honor, again it might seem sometimes a bit overzealous to the Court, but has certinly been one of, of compsion. I7m asking the Court to please give some thought and feeling to a reconsideration based on the representation that was made at his motion for new trial that these people are not the same, the indictment has failed, there's no conformity of proof,

and that Mr. Bly should be granted a new trial and an opportunity to confronted with his accused.

THE COURT: State?

MS. CLARK: Yes, Your Honor. Thank you, We all know that the, the reason for this indictment to be specific

IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

STATE OF MARYLAND *

Plaintiff *

vs. * Case No CR 15Ø71

RAYMOND J. BLY *

Defendant *

MOTION FOR RECONSIDERATION AND REQUEST FOR HEARING

COMES NOW the Defendant RAYMONDJ BLY by his attorneys, KRUGER, KOVELAND & HOLLMAN by RICHARD I. KOVELANT AND BARBARA H. KOVELANT andmoves this Honorable Court to reconsider its denial of Defendant7s Motion for a new trial filed February 2Ø, 199Ø and for his reasons states as follows:

1. The Defendant herein was convicted of child abuse pursuant to Article 27, Section 35A, Sexual Offense 4th Degree, pursuant to Article 27, Section 464c and common law Assault and Battery foolowing a jury trial concluded on May1, 1987.

2. Subsequently, the Defendant, pro se

filed a Motion for a New Trial alleging inter alia that he had obtained newly discovered evidence which would impact upon and overturn his conviction to wit, a blood test which clearly established that the Complainant was an imposter.

3. The Defendant is currently on a probationary sentence of (3Ø years for the convictions as set forth in paragraph 1.

4. By appearing pro se this Defendant was unfamiliar with the rules and procedures of this Court and was not able to articulate the basis of his Motion for a New Trial and believes the same is meritorious for the reasons cited in the attached Memorandum.

5. The Court denied his Motion by Order of February 2Ø, 199Ø, however, by allowing the Defendant an opportunity to be heard at an argument on reconsideration and bring forth the factual and legal basis of his arguments in support of his Motion will serve the ends of justice.

6. The ends of justice will be served

and no prejudice will inure to the State if this Court allows its Order o February 20, 1990 tobe reconsidered.

7, The Defendant incorportes by reference its Memorandum filed herewith.

8. The Defendant respectfully requests a hearing on this Motion.

Respectfully submitted,

KRUGER, KOVELANT & HOLLMANN

By: RICHARD I. KOVELAND

By: BARBARA H. KOVELANT

308 Second Street

Laurel, Maryland 20707

(301) 953-7440

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of March 1990 a copy of the foregoing was mailed, first class postage prepaid, to the Office of the State's Attorney, Court House, 360 Court Avenue, Ellicott City, Md 21043

RICHARD I. KOVELANT

IMMUNOGENETICS AND IMMUNOHEMATOLOGY LABORATORY

Maryland Medical Laboratory, Inc.

1901 Sulphur Spring Road

Post Office Box 7379, Baltimore, Maryland 21227-9988

Telephone (301) 247-9100. National Watts 800-368-2576

NGOC H DOAN

C/O HCDSS

3451 COURTHOUSE DR

ELLICOTT CITY MD 21043

BLY, VS. DOAN

Case/Name	Date	Age	Sex	Lab Number
BLY VS DOAN	12/04/89	?	?	L89103672

Parentage Report

NAME RACE

DATE SPECIMEN NUMBER

MOTHER: - BLY, TIENG DOAN

ORIENTAL

COLLECTED 12-05-89 L89103680

CHILD: DOAN, NGOC HONG

12/04/89 L89103670

PUTATIVE FATHER: NOT TESTED

NOT TESTED L89103671

GENETIC SYSTEMS:

NOTE: PRIOR PROBABILITY EQUALS 0.5

	MOTHER		CHILD
PUTATIVE FATHER	PATERNITY INDEX		
PHENOTYPE	- ABO	0	A
NOT TESTED	N/A		
PHENOTYPE	- RH		DCE
NOT TESTED	ECLUSION		
PHENOTYPE	- MNSs	-	MNs
NOT TESTED	N/A		
PHENOTYPE	- DUFFY		a+b-
NOT TESTED	N/A		
PHENOTYPE - KIDD	a+b+	a+b+	NOT
TESTED N/A			
PHENOTYPE - KELL	K-k+	NOT TESTED	
N/A			
PHENOTYPE - HLA-A	A1, A2	NOT TESTED	
N/A			
PHENOTYPE HLA-B	B57 B39,	B57	NOT

TESTED

PHENOTYPE - HLA-C -- NOT TESTED

N/A

SUMMARY:

CUMULATIVE PATERNITY INDEX: EXCLUSION

PROBABILITY OF PATERNITY: EXCLUSION

COMMENT:

BASED ON THE ABOVE AND THE ATTACHED GENETIC STUDIES, 2ND ORDER EXCLUSIONS WERE OBSERVED IN THE D17S79 DNA PROBE SYSTEM AND THE RH SYSTEM. THEREFORE, MS. TIENG DOAN BLY MUST BE EXCLUDED AS THE BIOLOGICAL MOTHER OF THE CHILD, NGOC HONG DOAN.

SWORN AND SUBSCRIBED TO BEFORE ME THIS 23 DAY OF JANUARY 1990.

Sharlene P Blum I(ASCP) CHT (ABHI)

DATE: 1/23/90

IMMUNOGENETICS DEPARTMENT HEAD

Norman C. Kramer, M.D., F.A.C.P.

Date: 1/23/90

IMMUNOGENTICS DIRECTOR

(COMPLETED) 01/23/90 13:37 PM

IMMUNOGENETICS AND IMMUNOHEMATOLOGY LABORATORY

MarylandMedical Laboratory, Inc.

1901 Sulphur Spring Road

Post Office Box 7379 Baltimore, Maryland 21227-9988

Telephone (301) 247-9100 National Watts 800-368-2576

RAYMOND BLY BLY VS DOAN

8087 Washington Blvd RED CELL EnZYMES &

Jessup, Maryland 20794 SERUM PROTEINS REPORT

PAGE 2 OF 3

CASE/NAME	DATE	AGE	SEX	LAB NUMBER
BLY, VS DOAN	12/05/89	?	?	

PARENTAGE REPORT

NAME

RACE

MOTHER: BLY, TIENG DOAN

ORIENTAL

DATE COLLECTED SPECIMEN

NUMBER

12/05/89 L89103680

CHILD: DOAN, NGOC HONG

12/04/89 L89103670

PUTATIVE FATHER NOT TESTED

L89103671

GENETIC SYSTEMS;

NOTE: PRIOR PROBABILITY EQUALS 0.5

	MOTHER	CHILD	PUTATIVE FATHER	PATERNITY INDEX
PHENOTYPES:				
PGM	1+,2+	1+,2-	NOT TESTED	N/A
ESD	1,2	1	NOT TESTED	N/A

EAP(ACP)	A,B	A,B	NOT	TESTED
N/A				
ADA	1	1	NOT	TESTED
N/A				
CA II	1	1	NOT	TESTED
N/A				
PEP A	1	1	NOT	TESTED
N/A				
GCI	1F,1S	1S,2	NOT	TESTED
N/A				
TF	C	C	NOT	TESTED
N/A				
AK	1	1	NOT	TESTED
N/A				

Sharlese P. Blum I (ASCP) CHT(ABHI)

DATE: 1/23/90

IMMUNOGENETICS DEPARTMENT HEAD

Norman C. Kramer, MD., F.A.C.P.

DATE: 1/23/90

IMMUNOGENETIC DIRECTOR

SWORN AND SUBSCRIBED TO BEFORE ME THIS

23 DAY OF JANUARY 1990

TONIA D. SCOTT

NOTRY PUBLIC STATE OF MARYLAND

IMNOGENTICS AND IMMUNOHEMATOLOGY LABORATORY

Maryland Medical Laboratory, Inc.

1901 Sulphur Spring Road

P.O. Box7379 Baltimore, Md 21227-9988

Telephone (301) 247-9100 National Watts 800-368-2576

RAYMOND BLY

8087 WASHINGTON BLVD

JESSUP, MARYLAND 20794

BLY, VS. DOAN

DNA REPORT

CASE/NAME	DATE	AGE	SEX	LAB NUMBER
BLY, VS. DOAN	12/05/89	?	?	L89103672

PARENTAGE REPORT

NAME	RACE	DATE SPECIMEN COLLECTED

NUMBER

MOTHER BLY, TIENG DOAN ORIENTAL

12/5/89 L89103680

CHILD: DOAN, NGOC HONG

12/4/89 L89103670

PUTATIVE FATHER: NOT TESTED NOT

TESTED L89103671

GENETIC SYSTEMS:

NOTE: PRIOR PROBABILITY EQUALS 05

MOTHER CHILD PUTATIVE

PATERNITY

FATHER INDEX

ocus w/ Probe

Pst 1

D14S13 PAC299 5.630 5.630 NOT

TESTED N/A

5.630 5.630 NOT

TESTED

D17S79 PAC256 3.583 3.337 NOT

TESTED EXCLUSION

3.451 3.337 NOT TESTED

D2S44 PAC255 11.566 11.141 NOT TESTED N/A

10.038 10.038 NOT TESTED

SUMMARY:

CUMULATIVE PATERNITY INDEX: EXCLUSION

PROBABILITY OF PATERNITY: EXCLUSION

COMMENT:

BASED ON THE ABOVE GENETIC STUDIES, A 2ND ORDER EXCLUSION IN THE D17S79 DNA SYSTEM WAS OBSERVED. THEREFORE, MS. TIENG DOAN BLY MUST BE EXCLUDED AS THE BIOLOGICAL MOTHER OF THE CHILD, NGOC HONG DOAN.

Sharlene P Blum I (ASCP) CHT(ABHI)

Date: 1/22/90

IMMUNOGENETICS DEPT HEAD

Norman C. Kramer, M.D.,F.A.C.P. Date:

1/23/90

IMMUNINOGENTICS DIRECTOR

SWORN AND SUBSCRIBED TO BEFORE ME THIS

23 DAY OF JANUARY 1990 TONIA D. SCOTT

NOTARY PUBLIC STATE OF MARYLAND